

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Linda Samet

v.

Case No.
95-01096

Name of Respondents

Goodwin Telzer
Tripp & Co., Inc.
Arlene Telzer

Consolidated With

In the Matter of the Arbitration Between

Name of Claimant

Eleanore Elefant

v.

Case No.
95-01431

Name of Respondents

Goodwin Telzer
Tripp & Co., Inc.
Arlene Telzer

REPRESENTATION

Claimants Linda Samet ("Samet") and Eleanore Elefant ("Elefant") appeared Pro Se.

For Respondents Goodwin Telzer ("G. Telzer"), Arlene Telzer ("A. Telzer") and Tripp & Co., Inc., ("TCI"), (collectively referred to as "Respondents"), appeared Donald O'Connor, compliance officer for Tripp & Co., Inc., located in New York City, New York.

CASE INFORMATION

The Statement of Claim on behalf of Samet was filed on March 2, 1995.

Claimant Samet's Submission Agreement was signed on February 7, 1995.

A joint Statement of Answer to Samet's claim was filed by Respondents on April 25, 1995.

Amendments to the Statement of Claim were filed on May 24, 1995 and June 26, 1995.

A response to Claimant Samet's amended Statement of Claim was filed jointly by the Respondents on June 15, 1995.

Respondents Goodwin Telzer, Arlene Telzer and Tripp & Co., Inc.'s Submission Agreements were signed on April 24, 1995.

The Statement of Claim of behalf of Elefant was filed on March 22, 1995.

Claimant Elefant's Submission Agreement was signed on March 8, 1995.

A joint Statement of Answer to Telzer's claim was filed by Respondents on May 12, and May 15, 1995.

Respondents Goodwin Telzer and Arlene Telzer's Submission Agreements were signed on May 15, 1995.

Respondent Tripp & Co., Inc. did not file a properly executed Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: 4/10/96 - 2 sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York.

CASE SUMMARY

Claimant Samet alleged that Respondents steered and pressured her into purchasing investments which were too risky for her financial situation. Claimant further alleged that in August of 1993 she spoke with G. Telzer who assured her that he was a successful investor upon whom she could rely for investing so she recommended his services to her sister, Claimant Eleanore Elefant. Claimant also alleged that G. Telzer misstated her investor profile on her account forms indicating she was a more experienced investor than she was. Claimant contended that G. Telzer strongly encouraged her to purchase shares of Madison Group ("Madison") calling it the next "Blockbuster" to which she agreed. Claimant further contended that G. Telzer said Madison was going to make "big money" and said he had purchased it for his children and grandchildren but he did not disclose the associated risks. Claimant further contended that over the next few months G. Telzer convinced her to purchase several penny stocks such as Command Credit,

Members Services, Teletek, and additional Madison shares. Claimant also contended that G. Telzer never disclosed the risks involved but continually recommended that she not sell because the companies would be successful. Claimant alleged that Member Services and Teletek have become worthless and that G. Telzer became verbally abusive when she complained about his investment advice. Claimant further alleged that as a result of the above, she has suffered a loss for which the Respondents should be held liable.

At the hearing, Claimant Elefant testified that respondent Tezler left a message on her answering and claimant returned the call. At that time, claimant was told by Respondent Tezler that Elefant's sister Linda had purchased the same securities and that he could sell them to her at the same price and she immediately purchased them.

Respondents maintained that Samet contacted G. Telzer expressing her interest in Madison. Respondents further maintained that Samet's financial situation was reviewed and she agreed to purchase 500 shares for \$892.50 as that was all she could afford. Respondents also maintained that Samet made unsupported statements concerning their activities with respect to Madison as there were no "kickbacks" nor did G. Telzer call Madison the next "Blockbuster." Respondents contended that no penny stocks were sold to Claimant as they only sell NASDAQ listed stocks. Respondents further contended that Samet contacted them about stock purchases and was never pressured into purchasing. Respondents also contended that all risks were explained to Samet and that she could have sold the stocks at any time. Respondents maintained that upon learning of Samet's dissatisfaction, TCI's CEO, Donald L. Carman, advised her to sell the securities if she felt that they were not for her. Respondents further maintained that she refused to sell although the stocks were dropping in value. Respondents also maintained that they were not market makers, did not own options, were not underwriters, personally did not own shares nor did they receive money from the companies involved. Respondents contended that as a result of the above, they should not be held liable.

In an amendment to the Statement of Claim, Samet restated that the stocks were unsuitable and that she was misinformed as to the risks. Claimant further alleged that Respondents urged her to purchase additional shares irrespective of her financial situation.

In a joint response to the amended Statement of Claim, Respondents maintained that Claimant initiated the communication concerning the purchase of Madison. Respondents further maintained that Claimant's account was handled in accordance with industry standards and that she was not charged excessive commissions nor was she misinformed about stocks. Respondents also maintained that all literature which was received by Samet was written by the companies and was not given on TCI letterhead. Respondents contended that Samet has made many unsupported and inflammatory statements about them which are unsupported by the facts.

Claimant Elefant alleged that Respondents were negligent in recommending that she purchase stocks. Claimant further alleged that she approached them in August of 1993 and had no experience in stock investing. Claimant also alleged that she informed them that she was looking for growth with a minimum amount of risk. Claimant contended that she was assured Madison and Command Credit Corp. fit the description so she purchased them. Claimant further contended that in November of 1993 and January of 1994, G. Telzer contacted her and coerced her into purchasing a total of 1500 shares of Member Service Corp. Claimant also contended that the recommendations were done pursuant to a scheme to defraud her. Claimant further contended that as a result of the above, she has suffered a loss for which

that respondents should be held liable.

Respondents maintained that Claimant Elefant's allegations are similar to Samet's, and therefore, referred to their Statement of Answer filed in response to Samet's claims. Respondents further maintained that Elefant made a conscious decision to speculate, refused to sell, and hopes to get her money back. Respondents also maintained that Elefant contacted them pursuant to her sister, Samet's, recommendation. Respondents contended that stock recommendations were made based on the investor profile information Elefant provided. Respondents further contended that they followed all regulatory, business, ethical and fiduciary responsibilities with respect to Elefant and Samet. Respondents also contended that they are well respected in the securities industry and would not have done the things of which Elefant and Samet accuse them. Respondents maintained that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimant Samet requested \$5,000.00 in actual damages plus \$4,000.00 for emotional suffering brought on by the arbitration, interest from August 24, 1993, at the rate of 6%, legal expenses and filing fees.

Claimant Elefant requested \$3,662.50 in actual damages.

Respondents requested that the claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings as to Tripp & Co., Inc. who filed answers to Claimants' Claims, but failed to file a properly executed Submission Agreement submitting this dispute to NASD arbitration:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found the Tripp & Co., Inc. was a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Tripp & Co., Inc. pursuant to Section 12(a) of the Code. Therefore, Tripp & Co., Inc. was required to file with the NASD an executed Submission Agreement pursuant to Section 12(b) of the Code. In this regard, the panel found that the NASD properly served the Statement of Claim upon Tripp & Co., Inc. pursuant to Sections 25(a) and (c) of the Code.

The parties have agreed that the Award in this matter may be a handwritten signed Award. The parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing

submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Tripp & Co., Inc. ("TCI") shall assume ownership of all stock positions held in the TCI account of Linda Samet.
2. Respondents Tripp & Co., Inc., Goodwin Telzer and Arlene Telzer are jointly and severally liable and shall pay to Claimant Linda Samet the sum of \$5,000.00 in actual damages.
3. Respondent Tripp & Co., Inc. ("TCI") shall assume ownership of all stock positions held in the TCI account of Eleanor Elefant.
4. Respondents Tripp & Co., Inc., Goodwin Telzer and Arlene Telzer are jointly and severally liable and shall pay to Claimant Eleanor Elefant the sum of \$3,662.50 in actual damages.
5. Each party shall bear their respective costs, including attorney's fees.
6. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$75.00 non-refundable filing fee previously paid by Samet and the \$50.00 non-refundable filing fee previously paid by Elefant and has assessed the following forum fees:

2 hearing sessions X \$300	= \$600.00
minus Samet's hearing session deposit of \$50.00	= \$ 50.00
minus Elefant's hearing session deposit of \$100.00	= <u>\$100.00</u>
Total outstanding	= \$450.00

Claimant Linda Samet be and hereby is liable and shall pay to the NASD the sum of \$150.00 minus the \$50.00 previously paid. This amount represents one-quarter of the forum fees due and owing to the NASD.


Claimant Eleanor Elefant be and hereby is liable and shall pay to the NASD the sum of \$150.00 minus the \$100.00 previously paid. This amount represents one-quarter of the forum fees due and owing to the NASD.

The Respondents Tripp & Co., Inc., Goodwin Telzer and Arlene Telzer be and hereby are jointly and severally liable and shall pay to the NASD \$300.00. This amount represents one-half of the forum fees due and owing to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATOR'S SIGNATURE

I, **SAMUEL H. FREEMAN, ESQ.**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

A handwritten signature in cursive script, reading "Samuel H. Freeman", written over a horizontal line.

Samuel H. Freeman, Esq.
Public Chairperson

Date of Decision: June 24, 1996