

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph and Deidra Siracusa

95-03920

Name of Respondents

Ernst & Company
Elliott Mittler

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 15, 1995 Claimants Joseph and Deidra Siracusa ("Claimants"), who appeared Pro Se, alleged that they held an account with Respondent Ernst & Company ("EC"), and that their account executive, Respondent Elliott Mittler, sold 3,000 shares of UTS Panax Pharmaceuticals ("Panax") and transferred the proceeds from this sale to his account at Republic Bank for Savings as directed. The Claimants further alleged that on February 28, 1995, Mittler called to explain that the firm had voided the sale of 3,000 shares of Panax and replaced it with the sale of 2,700 shares. Claimant J. Siracusa further contended that an unauthorized deduction of \$5,107.50 was taken from his account to reflect the difference in the shares sold. Claimants alleged that they disputed this deduction, but were unsuccessful and as a result, they have suffered a loss for which the Respondents should be held liable.

Respondents Ernst & Company and Elliott Mittler ("Respondents") through their representative and counsel, Michael H. Du Boff, Esq. of Salon, Marrow & Dyckman, LLP, New York, New York, maintained that on or about February 17, 1995, they received an order from Claimant J. Siracusa for the sale of 3,000 shares of Panax with instructions to sell at 17 1/8 for "next day" settlement to the brokerage firm of Hanover Sterling. Respondents further maintained that Mittler informed Claimant J. Siracusa that he was told that Hanover Sterling appeared to have serious financial problems and was in danger of failing. Respondents contended that Mittler advised Claimant J. Siracusa that the firm would not execute any orders relating to Panax units or Hanover Sterling unless he assumed all risks associated with executing such transactions. Respondents further contended that Claimant J. Siracusa agreed to the conditions and the trades were executed. Respondents maintained that on February 21, 1995, pursuant to Claimants' instructions and not related to any specific purchase or sale of securities, \$49,039.98 was wired to their account at Republic Bank for Savings. Respondents further maintained that EC only had 2,765 units of Panax in its possession, and that because Hanover Sterling rejected the 3,000 units, EC canceled the sale of 3,000 units of Panax and replaced it with the sale of 2,700 units. Respondents contended that they did not commit any improper or negligent acts, and therefore, they should not be held liable.

In a reply to the Statement of Answer, the Claimants maintained that in the years they placed trades with Mr. Mittler, he never warned them of any risks associated with investments he recommended. Claimants also maintained that Respondents are responsible for the funds deleted from the account, and should be held liable.

RELIEF REQUESTED

Claimants Joseph and Deidra Siracusa, requested \$5,107.50 in actual damages.

Respondents Ernst & Company and Elliott Mittler, requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Martin J. Siegel, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Joseph and Deidra Siracusa on August 5, 1995 and by the Respondents Ernst & Company and Elliott Mittler on December 4, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Joseph and Deidra Siracusa against Respondents Ernst & Company and Elliott Mittler are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Ernst & Company and Elliott Mittler shall pay to Claimants Joseph and Deidra Siracusa \$150.00 as reimbursement of the filing fee.

AFFIRMATION

STATE OF

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COUNTY OF

I, **MARTIN J. SIEGEL, 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 oath and award.



Martin J. Siegel, Esq.

DATE OF DECISION: April 19, 1996