

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Irene Michaels,

Claimant,

and

No. 95-04168

Haskell M. Israel, and
Strasbourg Pearson Tulcin Wolff, Inc.,

Respondents.

REPRESENTATION OF PARTIES

For Claimant: Irene Michaels ("Michaels") was represented by Thomas J. Ramsdell, Esq. of Irene Michaels & Torshen Spreyer & Garmisa Ltd., located in Chicago, Illinois.

For Respondent: Haskell M. Israel ("Israel") appeared pro se.

For Respondent: Strasbourg Pearson Tulcin Wolff, Inc. ("SPTW") was represented by David J. Bolton, Esq. of Stroock & Stroock & Lavan, located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on: August 30, 1995.

Claimant's Amended Statement of Claim was filed on: May 30, 1996.

Claimant's Second Amended Statement of Claim was filed on: August 27, 1996.

Claimant's Submission Agreement was signed on July 19, 1995.

Respondent Israel's Statement of Answer was filed on: October 6, 1995.

Respondent Israel's Submission Agreement was signed on: October 7, 1995.

Respondent SPTW's Statement of Answer was filed on: October 27, 1995.

Respondent SPTW's Submission Agreement was signed by Michael Schumacher, President of SPTW, on: October 11, 1995.

HEARING INFORMATION

Large and Complex Administrative Hearings: April 22, 1996 for one (1) session.

Pre-Hearing Conferences: March 6, 1997 for one (1) session.

Hearing Dates/Sessions: March 11, 1997 for two (2) sessions;
March 12, 1997 for two (2) sessions; and
March 13, 1997 for two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant brought this action to recover investment losses allegedly resulting from the acts, omissions, and representations of Respondent Israel while he was Director of Marketing for respondent SPTW. Michaels asserted in her claim that:

1. In the Spring of 1994, Michaels transferred from Merrill Lynch all of her life savings to Israel and SPTW including an IRA worth \$6,165.29, another IRA worth \$3,053.06, and stock with a total value of \$78,639.53, in addition to \$10,809.84 in cash, in Chicago, Illinois.

2. Israel and SPTW violated her instructions by selling certain stocks that she transferred to them and investing the proceeds and the cash she deposited in small, risky, speculative stocks (Helionetics, Inc., Wiz Technology, and Tri-Lite, Inc.) that did not pay dividends;

3. Respondents failed to cease purchasing these securities upon Michaels request or keep at least \$25,000 in her money fund accounts;

4. In April 1995, Claimant transferred her entire portfolio back to Merrill Lynch, but by this time her stock in Helionetics, Inc. and Tri-Lite, Inc. was nearly worthless;

5. Israel intentionally, deceitfully and fraudulently did not disclose to her SPTW's financial interest in the Helionetics, Inc., Wiz Technology, and Tri-Lite, Inc. securities and its involvement as underwriter, despite his knowledge of the high degree of risk involved in investing in these securities, his knowledge that he was managing substantially all of Claimant's life savings which she desired to keep invested in a conservative manner, and his knowledge that Claimant could not afford to lose her entire investment; and

6. Israel and SPTW failed to timely execute a market order to sell all of her shares of Wiz Technology when she ordered them to do so.

Claimant asserted the following causes of action: (1) unauthorized trading; (2) failure to follow Claimant's investment objectives and instructions; (3) violation of §12 (2) of the Securities Act of 1933; (4) violation of §10 (b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; (5) violation of §1962 (c) of the Racketeer Influenced and Corrupt Organizations Act; (6) breach of fiduciary duty; (7) violation of Art. III, §2, of the NASD Rules of Fair Practice; (8) violation of rules of the New York Stock Exchange and American Stock Exchange; (9) breach of the duty to Claimant to invest in securities that were suitable to her needs and investment desires; (10) engaging in a fraudulent and deceitful pattern of investing on behalf of Claimant, and in distributing the common stock of Wiz Technology, Inc.; and (11) violation of the Illinois and New York securities laws. In addition, Claimant alleged that SPTW was liable for the acts, omissions and representations of its servant, employee and agent.

Respondent Israel denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on his part. Israel contended that Claimant acknowledged that she understood the risks involved in the investments recommended and made, and she participated and consented in all purchases. Israel specifically denied that Claimant ever informed him that she wanted conservative investments. Israel asserted that Claimant initially indicated that she desired to hold the stocks that she alleged were wrongfully sold, but later changed her mind and decided to sell these stocks.

Respondent SPTW also denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. SPTW incorporated the responses made by Israel into its Statement of Answer. SPTW asserted that Israel did exactly what Claimant desired. According to SPTW, Claimant transferred her account from Merrill Lynch to SPTW and Israel because she desired to invest in securities with greater potential for appreciation, which is confirmed by her new account application that indicates business risk appreciation. Also, SPTW denied that it ever failed to disclose any relevant information to Claimant. Finally, SPTW denied that it or Israel ever failed to execute any trade when requested by Claimant or ever purchased any security for her without authorization.

SPTW asserted the following affirmative defenses: (1) Claimant authorized, consented to or acquiesced in the execution of each transaction in her accounts; (2) All transactions in Claimant's accounts were suitable and appropriate for Claimant; (3) Claimant was barred from recovery herein under the doctrines of ratification, estoppel, waiver and laches; (4) Claimant was fully aware from the onset of the risks inherent in pursuing the investment strategy utilized and voluntarily assumed such risk; and (5) Claimant failed to mitigate her alleged damages.

RELIEF REQUESTED

Claimant requested an award for compensatory damages in the amount of approximately \$24,144.35 resulting from the decrease in value of her portfolio; compensatory damages for further losses resulting from her inability to sell her shares of Helionetics, Inc., Tri-Lite, Inc., and Wiz Technology

until October and September 1995; compensatory damages for loss of profits and income resulting from the sale of those securities transferred into her account with Israel and SPTW; and reasonable costs and attorneys fees.

Respondent SPTW requested that the claims asserted against it be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Haskell M. Israel and Strasbourger Pearson Tulcin Wolff, Inc. are jointly and severally liable for and shall pay claimant Irene Michaels compensatory damages in the amount of \$23,859.75.

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

3. Any relief not specifically awarded is hereby denied with prejudice.

FORUM FEES

Pursuant to § 10332(c) of the NASD Code of Arbitration Procedure (the "Code") the following Forum fees are assessed: One (1) pre-hearing conference x \$300 + six (6) hearing sessions x \$1,000 per session = \$6,300.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by claimant Irene Michaels.

Claimant Irene Michaels is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution additional forum fees in the amount of \$2,150.00 (= 1/3 \$6,300.00 total forum fees -

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\$1,000.00 hearing session deposit).

Respondent Strasbourger Pearson Tulcin Wolff, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$3,150.00 (= ½\$6,300 total forum fees).

Pursuant to § 10333 of the Code, respondent Strasbourger Pearson Tulcin Wolff, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$500.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Dated:

/s/ Jerome M. Katz, Esquire

May 31, 1997

Jerome M. Katz, Esquire

Public Arbitrator/Chairperson

/s/ Woodrow A. Sutton, Jr.

June 3, 1997

Woodrow A. Sutton, Jr.

Public Arbitrator

/s/ Ramona V. Larson

May 30, 1997

Ramona V. Larson

Industry Arbitrator