

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

- - - Marvin Tople,

Claimant,

and

No. 95-05364

Joseph Roberts & Co., Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant Marvin Tople ("Claimant") was represented by Anthony V. Trogan, Jr., Esq. of Weisman, Trogan, Young & Schloss, P.C., located in Bingham Farms, Michigan.

Respondent Joseph Roberts & Co., Inc. ("Respondent") was represented in pleadings by David A. Genelly, Esq. and Michael T. McRaith, Esq. of Fishman & Merrick, P.C., located in Chicago, Illinois. David A. Genelly, Esq. and Michael T. McRaith, Esq. withdrew as counsel for Respondent prior to hearing.

CASE INFORMATION

The Statement of Claim was filed on or about November 14, 1995.

Claimant's Submission Agreement was signed on November 6, 1995.

Respondent's Statement of Answer was filed on or about March 8, 1996.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a signed Submission Agreement from Respondent.

HEARING INFORMATION

The telephonic pre-hearing conference was held on: April 4, 1996 for one (1) session.

The hearing was held on: March 24, 1997 for one (1) session.

The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimant brought this action to recover losses sustained in his account as a result of Respondent's alleged misconduct. Claimant contended that when he opened his account with Respondent he fully disclosed all pertinent data about himself including his age, employment, assets, earning capacity and his legitimate long-term, conservative goals. Claimant asserted that Respondent, through its representatives, agreed to undertake the management of all funds placed in the account and became fiduciaries in fact and law for his account. Claimant alleged that Respondent, through its representatives, recommended unsuitable, highly speculative, volatile securities, such as Blue Chip Computerware, Inc. and Play Co. Toys Units, which were purchased without proper disclosure. Claimant maintained that he was abandoned by Respondent and its representatives as they quit or were fired from employment by Respondent and as Respondent shut down its New York area operations. Claimant made the following legal claims, including: (1) breach of contract; (2) common law fraud; (3) conspiracy; (4) promissory estoppel; (5) conversion; (6) negligence; (7) malpractice; (8) breach of fiduciary duty; (9) breach of federal securities law; (10) breach of Michigan securities law; (11) violation of Michigan Consumer's Protection Law; (12) churning; and (13) violation of the RICO statute, 18 U.S.C. § 1962.

Respondent denied the allegations set forth in the Statement of Claim. Respondent alleged that Claimant's investment objectives were short term growth with high risk. Respondent asserted that Claimant was suitable for every trade made in his account and Claimant knew of and approved every purchase or sale made for his account prior to its execution. Respondent contended that it diligently supervised all of its personnel in compliance with its regulatory and common law obligations. Respondent maintained that it is not independently liable under controlling person or *respondeat superior* doctrines. Respondent argued that to the extent Claimant incurred financial loss, he had the opportunity to avoid those losses because he owned primary responsibility for each transaction.

RELIEF REQUESTED

Claimant requested an award for compensatory damages in the amount of \$97,000, interest at 12%, all costs, attorney fees, exemplary and punitive damages, and the rescission of all transactions and payment of all monies necessary to make Claimant whole.

Respondent requested that the claims asserted against it be denied and that it be awarded its costs and attorney fees incurred in this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Joseph Roberts & Co., Inc. failed to appear at the hearing. Upon review of the file and the representations made on behalf of Claimant, the undersigned concurring arbitrators have determined that Respondent Joseph Roberts & Co., Inc. has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code").

The undersigned concurring arbitrators have also determined that Respondent Joseph Roberts & Co., Inc. had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Joseph Roberts & Co. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

Prior to hearing, the arbitrators were advised that the Claimant dismissed this action with respect to Respondents Mark J. McClain, Michael S. Weiner, and Joel A. Nazareno.

Pursuant to Respondent Brian C. Burke's filing with the U.S. Bankruptcy Court, this matter was automatically stayed with respect to Respondent Brian C. Burke.

The parties present at the hearing 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. That Respondent Joseph Roberts & Co., Inc. is liable for and shall pay to Claimant Marvin Tople compensatory damages in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00); and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300, and there was one (1) hearing session x \$750 = \$750 in forum fees. Total forum fees are \$300 + \$750 = \$1,050. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees a portion of the hearing session deposit in the amount of \$525 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Marvin Tople.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Joseph Roberts & Co., Inc.

Respondent Joseph Roberts & Co., Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$525. (1/2 total forum fees).

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

Concurring Arbitrators' Signatures

\s\ Barry Goldman
Barry Goldman, Esquire
Chairperson
Public Arbitrator

April 3, 1997
Dated:

\s\ Jerome D. Sobczak
Jerome D. Sobczak
Panelist
Public Arbitrator

April 2, 1997
Dated:

Dissenting Arbitrator's Signature

\s\ Thomas C. Girardot
Thomas C. Girardot
Panelist
Industry Arbitrator

April 2, 1997
Dated:

For NASD Regulation use only:
Date award served on the parties: April 9, 1997