

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mearl R. Guthrie

96-00242

Name of Respondents

Michael Sclafani
Howard R. Knapp
Lew Lieberbaum & Co.

REPRESENTATION

Claimant Mearl R. Guthrie ("claimant") appeared pro se.

Claimant dismissed with prejudice all claims against respondent Michael Sclafani ("Sclafani") prior to the hearing. Therefore, no representative appeared at the hearing on behalf of Sclafani.

Respondent Howard R. Knapp ("Knapp") appeared pro se.

Claimant dismissed with prejudice all claims against Respondent Lew Lieberbaum & Co., ("Lieberbaum") prior to the hearing. Therefore, no representative appeared at the hearing on behalf of Lieberbaum.

CASE INFORMATION

Statement of Claim was filed on January 11, 1996. Claimant's Submission Agreement was signed on December 9, 1995.

Statement of Answer was filed by Sclafani on March 6, 1996. Sclafani's Submission Agreement was signed on March 1, 1996.

Statement of Answer was filed by Knapp on April 15, 1996. Knapp's Submission Agreement was signed on April 29, 1996.

Motion to Dismiss was filed by Lieberbaum on February 6, 1996. Lieberbaum did not file a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions:

July 15, 1996

- 1 session

The hearing was held at the offices of the National Association of Securities Dealers, Inc., located in Cleveland, Ohio.

CASE SUMMARY

Claimant alleged that Sclafani misled him, made mistakes in his account and then refused to correct them. Claimant asserted that he received a notice from Hanover Sterling indicating that he purchased 2,340 shares of Porter McLeod for \$28,685.00. Claimant further asserted that he contacted Sclafani and informed him that there was an error and that Sclafani stated that he would erase the transaction from the account and credit the account \$40.00 for commissions.

Claimant alleged that when he received his 1099B from Hanover Sterling he noticed that the erroneous transaction had not been erased. Claimant further alleged that he spoke to Knapp who said that he would send a revised 1099B to him. Claimant also alleged that Knapp told him that he should send a confirmation letter and Knapp would sell the stock in his account. Claimant maintained that he sent the confirmation letter on February 22, 1995 and that Knapp had sufficient time to sell the stock before Hanover Sterling went into bankruptcy, but that the stock was not sold.

Claimant contended that, when he requested that Lieberbaum sell the stock, Lieberbaum informed him that they did not have the stock and, therefore, could not sell it. Claimant alleged that his account statement indicated that Lieberbaum did have the stock.

Sclafani denied any and all liability claimed by the claimant. Furthermore, Sclafani contended that he properly discharged his duties, responsibilities and obligations and acted in accordance with the applicable law as well as accepted industry standards and practices.

Moreover, Sclafani raised the following affirmative defenses: 1) claimant authorized all transactions; 2) claimant failed to exercise such diligence with respect to his investment as required by law; 3) claimant failed to timely object; 4) claimant's loss, if any, was caused or contributed to by the claimant's own fault or conduct and not by Sclafani; 5) claimant failed to state a claim upon which relief can be granted; 6) losses, if any, were incurred by the claimant due to market forces, events and/or occurrences outside his authority or beyond his control; 7) claimant ratified his transactions; and 8) claimant failed to allege any material facts to support his claim of fraud.

Knapp maintained that he did everything possible to help claimant, but that because of the closing of Hanover Sterling it was impossible for him to do anything. Knapp also contended that he did not receive claimant's confirmation letter.

In a motion to dismiss, Lieberbaum contended that Lieberbaum's only involvement with this claim was their acquisition of the Hanover Sterling accounts through a liquidation proceeding.

In addition, Lieberbaum alleged that the trustee for the liquidation indemnified Lieberbaum against any proceeding for actions committed prior to the delivery of such accounts to Lieberbaum. Moreover, according to Lieberbaum the United States Bankruptcy Court of the Southern District of New York issued an order enjoining all customers, creditors, or other parties from bringing any and all claims against Lieberbaum for any claims arising out of the period prior to the delivery date of such accounts to Lieberbaum. Respondent Lieberbaum further contended that it had absolutely no responsibility for the handling of any accounts at Hanover Sterling.

RELIEF REQUESTED

Claimant requested damages in the amount of \$17,094.25 plus 25 % growth in value for a total of \$21,367.81.

Sclafani requested that the claims be dismissed in their entirety and for such further relief as is just.

Knapp requested that he be dismissed as a party from this case.

Lieberbaum made a motion that it be dismissed as a party from this action.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated February 22, 1996, claimant advised the NASD that all claims against Lieberbaum were dismissed with prejudice.

By letter dated July 11, 1996, claimant advised the NASD that all claims against Sclafani were dismissed with prejudice.

AWARD

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

1. All claims against Knapp are hereby dismissed in their entirety.
2. Each party shall bear their respective costs.
3. All other claims are denied.

FORUM FEES

The arbitrator has determined that the NASD shall retain the \$100.00 non-refundable filing fee and the \$300.00 hearing session deposit paid by claimant as full consideration for the hearing conducted in this matter.

Arbitrator's Signature



Robert Rapp, Esq.
Public Arbitrator

Date of decision: September 20, 1996