

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Names of Claimants

Jeff Friedson,
Margareite Friedson,
Robert Jacobson and
Margaret Jacobson

and

Case Number 96-00258

Names of Respondents

Sal Waisbrut,
Securities Planners, Inc.,
Buttonwood Securities, Incorporated, and
Cantella & Company

REPRESENTATION OF PARTIES

Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson were represented by John D. Hudson, Esq. of The Rosenberg Law Firm located in Des Moines, IA.

Respondent Sal Waisbrut did not appear at the hearing and did not file a Statement of Answer or a Submission Agreement.

Respondent Securities Planners, Inc. did not appear at the hearing and did not file a Statement of Answer or a Submission Agreement.

Respondent Buttonwood Securities, Inc. did not appear at the hearing and did not file a Statement of Answer or a Submission Agreement.

Respondent Cantella & Co. was represented by Peter M. Coppinger, Esq. of Gadsby & Hannah located in Boston, MA.

CASE INFORMATION

The Statement of Claim of Claimants Jeff and Margareite Friedson was filed on or about January 8, 1996.

The Amended Statement of Claim of Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson was filed on or about March 19, 1996.

The Submission Agreement of Claimants Jeff and Margareite Friedson was signed on December 29, 1995.

The Submission Agreement of Claimants Robert and Margaret Jacobson was signed on February 20, 1996.

The Response to the Motion to Dismiss of Respondent Cantella & Co., Inc. was filed by Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson on or about August 26, 1996.

The Statement of Answer to the Statement of Claim and the Cross-Claim of Respondent Cantella & Co., Inc. was filed on or about March 14, 1996.

The Statement of Answer to the Amended Statement of Claim and the Cross-Claim of Respondent Cantella & Co., Inc. was filed on or about May 9, 1996.

The Motion to Dismiss of Respondent Cantella & Co., Inc. was filed on or about July 29, 1996.

The Submission Agreement of Respondent Cantella & Co., Inc. was signed on March 14, 1996 by Gerard Powers, Senior Vice President.

The Reply to the Claimant's Response to the Motion to Dismiss was filed by Respondent Cantella & Co., Inc. on or about October 24, 1996.

HEARING INFORMATION

The hearing was held on November 19, 1996 for a total of two (2) hearing sessions in Omaha, NE.

CASE SUMMARY

In the Amended Statement of Claim, Jeff and Margareite Friedson ("Friedson") and Robert and Margaret Jacobson ("Jacobson") (hereafter collectively referred to as "Claimants") alleged that Securities Planners, Inc. ("Securities Planners") and Buttonwood Securities, Inc. ("Buttonwood"), by and through its registered representative, Sal Waisbrut ("Waisbrut") and its clearing broker, Cantella & Co. ("Cantella") (hereafter collectively referred to as "Respondents") failed to disclose facts and made material misrepresentations concerning Wincanton Company common stock. On or about February 27, 1994, Friedson allegedly purchased 150 shares of Wincanton stock for \$9.50 each following a telephone solicitation from Waisbrut who recommended the purchase by explaining that the company manufactured hydraulic lifts for trucks and that it presented a wonderful

investment opportunity. As alleged, Friedson purchased an additional 350 shares at \$10.00 of Wincanton on or about March 23, 1995 based upon Waisbrut's rationale that little money could be made from just 150 shares. In June of 1993, Friedson allegedly bought 1500 more shares at \$10.50 per share for their margin account after statements made by Waisbrut saying that the company had received an order for 1000 lifts and that the company was trading at a low price earnings ratio. On or about August 15, 1995, Friedson purchased 2000 more shares of Wincanton for \$6 3/8 per share after Waisbrut allegedly guaranteed that Friedson would not lose money. When he discovered Wincanton trading at \$6.50 on or about August 15, 1995, Friedson called Waisbrut but Waisbrut recommended purchasing more Wincanton stock saying that the stock had split and that J.P. Morgan had signed an agreement to buy Wincanton for \$180,000,000.00. On or about August 17, 1995, Friedson allegedly purchased an additional 5000 shares at \$6.50 each, for a total investment of \$70,593.78 in Wincanton for 9650 shares. The Friedsons claimed that they financed their purchases, at the suggestion of Waisbrut, by obtaining a second mortgage on their residence. After an initial purchase of 100 shares by Jacobson, Waisbrut allegedly called Jacobson in March of 1995 recommending the purchase of 400 shares at \$9.50 per share while claiming that Chrysler was interested in acquiring Wincanton. Jacobson bought the additional 400 shares and bought 1500 more shares on or about June 23, 1995 following another call from Waisbrut. In August of 1995, Jacobson purchased another \$10,000.00 worth of Wincanton stock, for a total investment of \$31,176.00, allegedly based upon lies told by Waisbrut including that the stock, which was trading at about \$7.00, per share had split and that Fidelity Magellan Fund was acquiring shares. Claimants made other specific allegations against the Respondents including negligence, unsuitability, breach of fiduciary duty, negligent entrustment and supervision, and breach of contract.

Respondent Cantella & Co., Inc. denied the allegations set forth in the Statement of Claim. Cantella specifically stated that the Clearing Agreement that it entered into with Buttonwood dated February 7, 1994 formalized Cantella's role as clearing broker and contained terms to indemnify and to hold Cantella harmless from any claims resulting from Buttonwood's breach of the Clearing Agreement. Cantella asserted the following affirmative defenses:

1. The Statement of Claim failed to state a claim against Cantella for which relief can be granted because it failed to allege specifically what acts Cantella was alleged to have committed;
2. If the Claimants suffered the damages complained of, such damages were caused by persons or entities for whom Cantella was not legally responsible;
3. Claimants cannot recover or their recovery must be reduced because Claimants either waived a claim for or failed to mitigate their damages, if any;
4. As clearing broker only, Cantella cannot be held responsible for the actions or the other Respondents;
5. As the Friedsons' account was separate and distinct from the Jacobsons' account, joinder of the Jacobsons' claims with the unrelated Friedsons' claims was improper and unduly prejudicial to Cantella.

RELIEF REQUESTED

Claimants requested an award for compensatory damages in an undisclosed amount plus interest, costs and attorneys' fees.

Respondent Cantella & Co., Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and attorneys' fees. In addition, Cantella & Co., Inc. requested an award for indemnification in their favor and against Buttonwood and/or its employees for the full amount of any judgement entered in favor of Claimants and against Cantella plus costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. were properly served with the Statement of Claim pursuant to Section 10314 of the Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. had received due notice of the hearing as required under Section 10315 of the Code and that arbitration of the matter would proceed pursuant to Section 10318 of the Code.

Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. did not file with the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 10301 of the Code and are bound by the determination of the arbitration panel on all issues submitted.

At the request of Respondent Cantella & Co., Inc., the arbitrators considered their motion to dismiss and all related submissions prior to the hearing. On or about October 31, 1996, the arbitrators decided that the motion was denied.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. are hereby, jointly and severally, liable for and shall pay to Claimants Jeff Friedson and Margareite Friedson the amount of \$70,593.78 in compensatory damages;
2. Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. are hereby, jointly and severally, liable for and shall pay to Claimants Robert Jacobson and Margaret Jacobson the sum of \$31,176.00 in compensatory damages;
3. The claims against Respondent Cantella & Co. submitted by Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson are hereby denied in their entirety and dismissed with prejudice;
4. The claims against Respondent Sal Waisbrut submitted by Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson are hereby dismissed without prejudice;
5. Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. are hereby, jointly and severally, liable for and shall pay to Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson the sum of \$15,000.00 in attorneys' fees. In deciding to award attorneys' fees, the arbitrators considered the pleadings, the evidence and the testimony of the parties;
6. Any claims not specifically granted are hereby denied in their entirety; and
7. The parties shall bear their own costs except for the forum fees specifically addressed below.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session. There were two (2) hearing sessions x \$750.00 = \$1,500.00 in forum fees. Pursuant to Section 10332 of the 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 Section 10332(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by Claimants Jeff Friedson, Margareite Friedson, Robert Jacobson and Margaret Jacobson.

The NASD Regulation, Inc. Office of Dispute Resolution shall also retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited by Respondent Cantella & Co., Inc.

Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. are hereby, jointly and severally, liable for and shall pay to Respondent Cantella & Co., Inc. the sum of \$600.00 as reimbursement. Respondents Securities Planners, Inc. and Buttonwood Securities, Inc. are hereby, jointly and severally, liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$150.00 in forum fees.

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

Signed:

Dated:

James L. Schwartz, Esq.
James L. Schwartz, Esq.
Public Arbitrator, Presiding Chair

December 20, 1996

Sam Brower, Esq.
Sam Brower, Esq.
Public Arbitrator

December 19, 1996

Joseph Soshnik
Joseph Soshnik
Industry Arbitrator

December 18, 1996

Date served by the NASD Regulation, Inc.: December 20, 1996