

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Nader R. & Fatin Elhajj

96-00718

Name of Respondents

Lew Lieberbaum & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 16, 1996, Nader R. and Fatin Elhajj ("Claimants"), who appeared Pro Se, alleged that Respondent Lew Lieberbaum & Co., Inc. ("Lieberbaum") gave them unsuitable investment advice. Claimants specifically alleged that John Senn, a broker at Lieberbaum, encouraged them to purchase shares in KRUZ and JMAR. Claimants contended that Senn failed to disclose the level of risk in the above investments and that the investments were unsuitable for the degree of risk that they were willing to bear. Claimants further contended that they were inexperienced investors, that Senn misrepresented the performance of the stocks, and that Senn said that he had inside information on the investments. Claimants asserted that after Senn left Lieberbaum, he informed Claimants that he was under pressure to generate commissions and that Respondent encouraged him to push high risk inventory stocks on customers such as the Claimants. Claimants asserted that due to the wrongdoing of the Respondent, they suffered significant losses for which the Respondent should be held liable.

Respondent Lew Lieberbaum & Co., Inc. maintained through its representative and in-house counsel, Lawrence P. Sandor, Esq., that Senn gave the Claimants suitable investment advice based on the Claimants' personal and financial background. Respondent further maintained that the Claimants had indicated that they were experienced investors interested in investments which would yield very high returns. Respondent denied any allegation of misrepresentation and stated that the Claimants were fully informed on the risks of the investments in dispute. Respondent alleged that it never recommended the stocks based on inside information and further alleged that all recommendations were made from publicly available information. Respondent maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

In an Amendment to its Answer, Respondent asserted that Claimants indicated in their Designated Securities Agreement ("Agreement") that they were knowledgeable investors capable of evaluating the risks of a speculative investment. Respondent further asserted that Claimants indicated on the Agreement that they believed that speculative investments were suitable for their financial objectives.

In a Response to the Respondent's Amendment to Answer, Claimants alleged that they had no previous OTC experience, that the Respondent's information on their annual income and net worth was incorrect, and that Senn consistently assured them that the stocks in question did not carry any risk.

RELIEF REQUESTED

Claimants Nader R. and Fatin Elhajj requested \$6,278.00 in actual damages.

Respondent Lew Lieberbaum and Co., Inc. requested that the claims of the Claimants be dismissed.

AWARD

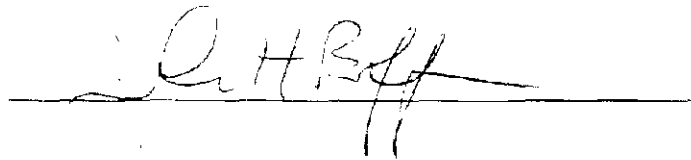
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John H. Baffa, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Nader R. and Fatin Elhajj on February 14, 1996, and by the Respondent Lew Lieberbaum and Co., Inc. on March 22, 1996.

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 Claimants Nader R. and Fatin Elhajj against Respondent Lew Lieberbaum & Co., Inc. 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 Claimants Nader R. and Fatin Elhajj shall be retained by the NASD, Inc.

AFFIRMATION

I, **JOHN H. BAFFA**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature, appearing to read "J H Baffa", is written over a horizontal line.

DATE OF DECISION: July 19, 1996