

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph J. Sarek & Hellyn L. Sarek

96-01421

Name of Respondents

J.B. Hanauer & Company
Courtney K. Anderson

REPRESENTATION

The Claimants appeared pro se.

For Respondents: Miriam Lefkowitz, Esq. of the law firm of Kenny Nachwalter Seymour Arnold Critchlow & Spector, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: April 1, 1996.

Amendment to Statement of Claim filed.

Second Amendment to Statement of Claim dated September 18, 1996.

Claimants' Submission Agreement signed on: March 13, 1996.

Joint Statement of Answer filed by Respondents on: July 12, 1996.

Respondents' Answer to Amendment to Statement of Claim dated September 27, 1996.

Respondents' Answer to Second Amendment to Statement of Claim dated September 27, 1996.

Respondent J.B. Hanauer & Company's ("Hanauer") Submission Agreement signed on: May 21, 1996.

Respondent Courtney K. Anderson's ("Anderson") Submission Agreement signed on: June 14, 1996.

HEARING INFORMATION

Three hearing sessions were conducted in this matter on May 20 and 21, 1997 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that the Respondents wrongfully told them to sell their shares in the Putnam High Yield Mutual Fund ("Putnam"). Claimants next contended that the Respondents misrepresented a tax swap to them, more specifically, the Respondent Anderson told them the swap of Weirton Steel bonds for Geneva Steel bonds would result in "no loss, no cost and result in a gain" and these statements were not accurate. Claimants further alleged that Respondent Anderson fraudulently sold certain bonds that they had submitted to be tendered. In addition, Claimants contended that Hanauer erroneously reported the interest paid to the Claimants on the Substitute 1099-INT Form submitted by Hanauer to the Internal Revenue Service.

Respondents maintained the first alleged misconduct related to Claimants' sale of their shares in Putnam High Yield Mutual Fund as the Claimants complained that Mr. Anderson wrongfully told them to sell their shares. Respondents maintained the evidence showed that Claimants made their own decision to sell Putnam and further, some weeks after the sale, when Claimants expressed regret at their decision to sell Putnam, Mr. Anderson offered to rescind the liquidation of Putnam which would have completely restored them to their prior position and the Claimants declined to do so.

Respondents next maintained that the Claimants contended that Mr. Anderson misrepresented a tax swap and, in reply, the Respondents maintained the evidence showed that Mr. Anderson explained both orally and writing that the swap would enable them to shelter \$4,750.00 in gains or income, improve the quality of the portfolio and increase the annual income, without changing the par value of the portfolio. Respondents contended the Claimants listened to the explanation and told Mr. Anderson to go ahead with it.

Respondents stated that the Claimants alleged that Mr. Anderson fraudulently sold certain bonds that they had submitted to be tendered. The Respondents maintained, in reply, that the evidence showed the bonds were accidentally sold and that the difference in value to Claimants, \$37.00, was sent to them as soon as Claimants informed Hanauer of the error.

Next, Respondents stated that the Claimants complained that Hanauer erroneously reported the interest paid to Claimants on the Substitute 1099-INT Form submitted by Hanauer to the Internal Revenue Service. Respondents maintained, in reply, that the evidence showed that Hanauer complied with its legal reporting obligations precisely as it was required to do by the Internal Revenue Code and the applicable regulations.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$32,281.57 plus applicable interest and an award of punitive damages.

Respondents requested that the panel enter a finding that there was no wrongdoing by the Respondents; that all claims asserted against them by Claimants be dismissed with prejudice; that Claimants be awarded nothing; that Claimants be required to pay for all of the costs and expenses of the arbitration proceeding; and, that Claimants be ordered to pay all of Respondents' attorneys' fees in defending the baseless arbitration.

OTHER ISSUES CONSIDERED & 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 original(s) remain on file with the NASD Regulation, Inc.

AWARD

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

All claims filed by the Claimants are found to be without merit and are dismissed. The arbitrators have further determined that Respondent Anderson did not engage in any wrongdoing and, in fact, was diligent in his efforts to continuously assist the Claimants.

The Claimants' request for punitive damages is denied.

The Claimants are liable and shall pay to the Respondent Hanauer legal fees in the sum of \$31,491.00 and expenses in the sum of \$1100.00 pursuant to Chapter 517, Florida Statutes.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$1,500.00 (three sessions x \$500.00) are assessed as follows:

The Claimants are assessed the sum of \$750.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. in the sum of 250.00.

The Respondent Hanauer is assessed the sum of \$750.00.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
Leo H. Kerns, Esq.

Public

_____/s/_____
Boyd Stagmer, CPA, CFP

Public

_____/s/_____
Samuel M. Niden

Industry

Date of Decision: June 16, 1997