

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Margo J. Lakin;
Margo J. Lakin Investment Trust;
Herbert S. Lakin, M.D.; and
The Herbert S. Lakin, M.D. Trust

96-01478

Name of Respondents

Oak Ridge Investments, Inc.;
Mathews Holmquist & Association, Inc.;
Samuel Wegbreit;
Leonardo E. Townsend;
David M. Klaskin

REPRESENTATION

For Claimant: Margo J. Lakin ("M. Lakin"); Margo J. Lakin Investment Trust ("M. Lakin Trust"); Herbert S. Lakin, M.D. ("H. Lakin"); and the Herbert S. Lakin, M.D. Trust ("H. Lakin Trust") were represented by Brian P. Biggins, Esq. of McCauley & Associates Co. L.P.A., located in Parma, Ohio.

For Respondents: Oak Ridge Investments, Inc. ("Oak Ridge"); Samuel Wegbreit ("Wegbreit"); Leonardo E. Townsend ("Townsend"); and David M. Klaskin ("Klaskin") were represented by Howard J. Stein, Esq. of Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: April 4, 1996.

Claimant M. Lakin's Submission Agreement signed on: March 14, 1996.

Claimant M. Lakin Trust's Submission Agreement signed on: April 30, 1996 by Margo J. Lakin and Julian Levy, co-trustees of the Margo J. Lakin Investment Trust.

Statement of Answer filed by Respondents Oak Ridge, Wegbreit and Townsend on: June 14, 1996.
Respondent Oak Ridge's Submission Agreement signed on: June 14, 1996 by Samuel Wegbreit, Chairman, Oak Ridge Investments, Inc.

Respondent Wegbreit's Submission Agreement signed on: June 14, 1996.

Respondent Townsend's Submission Agreement signed on: July 12, 1996.

Respondents' Counterclaim filed: June 14, 1996.
Respondents' Third-Party Complaint against H. Lakin filed: June 14, 1996.
Claimant's Reply to Counterclaim filed: June 27, 1996.
Third-Party Respondent H. Lakin's Answer to the Third-Party Complaint filed: July 16, 1996.

Amended Statement of Claim and Addition/Deletion of Parties filed by Claimants M. Lakin, M. Lakin Trust, H. Lakin and the H. Lakin Trust against Respondents Oak Ridge, Wegbreit, Townsend and Klaskin on: September 30, 1996.
Claimant H. Lakin's Submission Agreement signed on: September 24, 1996.
Claimant H. Lakin Trust's Submission Agreement signed: September 24, 1996.

Response to the Amended Claim filed by Respondents Oak Ridge, Wegbreit, Townsend and Klaskin on: October 22, 1996

Stipulation to Dismiss Klaskin as Respondent filed: March 3, 1997.

HEARING INFORMATION

Pre-Hearing Conference: July 18, 1997 before One (1) arbitrator.

Hearing Dates/Sessions: August 4, 1997 for Two (2) sessions;
August 5, 1997 for Two (2) sessions;
August 6, 1997 for Two (2) sessions;
August 7, 1997 for Two (2) sessions; and
August 8, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondent Townsend, while employed by or acting as an agent for Respondent Oak Ridge, engaged in actions that included unauthorized trading, churning, unsuitable transactions (including purchases in excess of \$225,000 in a single penny stock), and a common scheme of fraud and misrepresentation. In addition, Claimant alleged that Oak Ridge, Wegbreit and Klaskin breached their duties to control and supervise Townsend's activities.

Respondents denied the material allegations of the Claim, alleging that trades which M. Lakin alleged were unauthorized were authorized by H. Lakin (her father), who M. Lakin gave authority to make the trades; M. Lakin was informed of all trades immediately after they were made and never objected to them, thereby ratifying the trades; Wegbreit and Oak Ridge properly supervised Townsend and Claimants' accounts; and Claimants' ratified all transactions. In addition, the Respondents asserted several affirmative defenses.

In the counterclaim, Respondents Townsend, Oak Ridge and Wegbreit asserted claims for indemnification and/or contribution against the co-trustees of the Margo J. Lakin Trust for violation of

their fiduciary duty to the trust for permitting the activity to occur. In addition, the Respondents asserted a claim against H. Lakin for indemnification and/or contribution for his responsibility for the losses in M. Lakin's accounts.

Claimants denied the allegations of the counterclaim and third-party claim. In addition, the Claimants asserted several affirmative defenses.

RELIEF REQUESTED

Claimants requested entry of an award for actual damages to M. Lakin's individual account in the sum of \$191,072.00; actual damages to the M. Lakin Trust of \$255,184.00; actual damages to the H. Lakin Trust of \$583,248.00; actual damages to the H. Lakin IRA of \$84,022.00; lost interest and earning capacity on the total amount of actual damages calculated at no less than the statutory rate of interest for the State of Illinois; punitive damages of \$2,238,414.00, representing three times the actual unauthorized and/or unsuitable trading losses; plus statutory interest, attorneys' fees, costs and other appropriate relief. In addition, M. Lakin and the co-trustee requested that the Counterclaim asserted be dismissed in its entirety and that attorneys' fees, costs and such other relief be awarded to them. H. Lakin requested that the Third-Party Claim be dismissed in its entirety and that he be awarded attorneys' fees, cost and other relief.

Respondents requested that the claim be dismissed in its entirety and that costs, attorneys' fees and other relief be granted in their favor and against Claimants. In addition, Respondents Townsend, Wegbreit and Oak Ridge requested entry of an award against H. Lakin, M. Lakin and the co-trustee of the M. Lakin Trust and that they be awarded indemnification, contribution and such other relief as the panel deemed proper.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Notice of Bankruptcy received by the NASD, the claims against Respondent Matthews, Holmquist & Associates, Inc. were stayed. In addition, Claimants removed this Respondent as a party in the Amended Statement of Claim.

By order entered by the panel and forwarded to the parties on March 24, 1997 pursuant to the parties Stipulation of Dismissal, the claims against Respondent David Klaskin were dismissed with prejudice.

At hearing, Respondents presented a Motion for Directed Verdict on the issue of ratification, churning and suitability. The panel took the motion under advisement and the motion is denied.

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post

hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Leonardo E. Townsend and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to Claimant Herbert S. Lakin, M.D. Trust the sum of \$23,170.00 in actual damages. In addition, Respondents Samuel Wegbreit and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to Claimant Herbert S. Lakin, M.D. Trust the sum of \$11,584.00 as actual damages;

2. Respondents Leonardo E. Townsend and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to the Claimant, Herbert S. Lakin, M.D., the sum of \$4,448.00 in actual damages. Furthermore, Respondents Samuel Wegbreit and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to Claimant Herbert S. Lakin, M.D. the sum of \$2,223.00 in actual damages;

3. Respondents Leonardo E. Townsend and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to the Claimant, the Margo J. Lakin Trust, the sum of \$63,203.00 in actual damages. In addition, Respondents Samuel Wegbreit and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to Claimant Margo J. Lakin Trust the sum of \$31,597.00 in actual damages;

4. Respondents Leonardo E. Townsend and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to the Claimant, Margo J. Lakin, the sum of \$50,000.00 in actual damages. Furthermore, Respondents Samuel Wegbreit and Oak Ridge Investments, Inc. are jointly and severally liable for and shall pay to Claimant Margo J. Lakin the sum of \$25,000.00 in actual damages;

5. The claims for punitive damages are hereby dismissed with prejudice;

6. The Respondents' Counterclaims and Third-Party Claims are hereby dismissed and denied;

7. Pursuant to the Order of Dismissal entered by the Panel and forwarded to the parties on March 24, 1997, the claims against Respondent David Klaskin are dismissed with prejudice;

8. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

9. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$350.00 member surcharge paid by Respondent Oak Ridge Investments, Inc. pursuant to Section 10333 of the Code of Arbitration

Procedure.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing x \$300.00 per session = \$300.00; Nine (9) hearing sessions x \$1,000.00 per hearing session = \$9,000.00; Total Forum Fees = \$9,300.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$250.00 claim filing fee and, as forum fees, the \$1,000.00 hearing session deposit previously paid by Claimants. Claimants Margo J. Lakin, The Margo J. Lakin Trust, Herbert S. Lakin M.D. and The Herbert S. Lakin, M.D. Trust are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$3,650.00 in forum fees.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee and, as forum fees, the \$600.00 hearing session deposit previously paid by the Respondents. Furthermore, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the additional \$900.00 in hearing session deposits previously deposited by the Respondents as forum fees. In addition, Respondents Oak Ridge Investments, Inc., Leonardo E. Townsend and Samuel Wegbeit are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$3,150.00 in forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Alan S. Farnell
Alan S. Farnell, Esq.
Public Arbitrator
Chairperson

October 28, 1997

/s/ Jason R. Levine, Esq.
Jason R. Levine, Esq.
Public Arbitrator

October 28, 1997

/s/ Edward M. Roob
Edward M. Roob
Industry Arbitrator

October 28, 1997

For NASD Use Only

Date of Service: November 3, 1997