

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Beatrice Landau

96-01923

Name of Respondents

Schroder Wertheim & Co. Inc.  
Frederica Miceli  
Balis Firestone Lewittes & Coleman, Inc  
Stuart Coleman & Co. Inc.

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**REPRESENTATION**

For Claimant Beatrice Landau ("Claimant") appeared Paul Landau, Esq., sole practitioner, located in Van Nuys, California.

Respondent Frederica Miceli ("Miceli") appeared pro se.

For Respondent Stuart Coleman & Co., Inc. ("Stuart Coleman") appeared Victor Sicuranza, located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on: May 08, 1996.

Claimant's Submission Agreement signed on: May 06, 1996

Statement of Answer filed by Respondent Schroder on: June 27, 1996.

Respondent Schroder's Submission Agreement signed on: June 25, 1996.

Statement of Answer filed by Respondent Miceli on: June 13, 1996.

Respondent Miceli's Submission Agreement signed on: May 30, 1996.

Statement of Answer filed by Respondent Balis on: June 03, 1996.

Respondent Balis' Submission Agreement signed on: June 27, 1996.

Statement of Answer filed by Respondent Stuart Coleman on: June 25, 1996.

Respondent Stuart Coleman's Submission Agreement signed on: June 24, 1996.

Respondents Balis and Stuart Coleman filed a Counterclaim and a Crossclaim on: March 18, 1997.

Claimant's Answer to Counterclaim filed on: April 10, 1997.

Respondent Miceli's Answer to the Crossclaim and Counterclaim filed on April 14, 1997.

### **HEARING INFORMATION**

Pre-Hearing Conference:	December 03, 1996	One Session
	April 02, 1997	One Session
	April 09, 1997	One Session
	April 17, 1997	One Session
Hearing Dates/Sessions:	July 08, 1997	Two Sessions
	July 09, 1997	Two Sessions
	July 10, 1997	Two Sessions
	September 02, 1997	Two Sessions
	September 03, 1997	Two Sessions
	September 04, 1997	Two Sessions

The pre-hearing conferences were held telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that she is a seventy year old financially unsophisticated widow with conservative investment objectives. Claimant alleged that Respondent Miceli fraudulently filled out her customer account forms indicating that Claimant's investment objectives were trading profits and short term trading with business man's risk. Claimant further alleged that she never saw or approved these forms.

Claimant alleged that Respondent Miceli engaged in excessive and unsuitable trading which resulted in losses to Claimant. Claimant also alleged that Respondent Miceli was fraudulent in her trading activities and statements to Claimant. Claimant further alleged that Respondents Schroder and Stuart Coleman failed to supervise the trading activities of Respondent Miceli. Claimant alleged that Respondent Schroder and Stuart Coleman breached their respective fiduciary duties owed to Claimant and acted in a fraudulent manner.

Claimant asserted that in thirty six days, between January 1995 through early February 1995, while her account was with Respondent Balis, Respondent Miceli traded her account in excess of \$1,500,000.00. Claimant further asserted that in forty days, from April 10, 1995 to May 19, 1995, while her account was with Respondents Schroder and Stuart Coleman, Respondent Miceli traded her account in excess of \$1,600,000.00.

Claimant alleged that, in April 1995, Respondent Miceli fraudulently assured her that the trading in the account would be more conservative in the future. Claimant further alleged that, in May 1995, she received a letter from Victor T. Sicuranza, Executive Vice President and Director of Compliance at Stuart Coleman & Co., Inc., indicating that the firm had advised Respondent Miceli to refrain from the current pattern of trading in the future and that if Claimant wished to continue to trade in this manner that a letter from her would be required. Claimant stated that despite the assurances of both Respondent Miceli and Respondent Stuart Coleman her account statement continued to reflect short term and margin trading.

Respondent Miceli maintained that she informed Claimant, at the opening of the account, that her accounts were discretionary trading accounts whose funds were used to buy and sell stock and options on a daily basis. Respondent Miceli maintained that Claimant agreed to put a portion of her funds in a conservative account and the remainder of the funds would be traded. Respondent Miceli also maintained that before Claimant received Mr. Sicuranza's letter there had been no expressed concern from Claimant on the way her account was being handled.

Respondent Miceli maintained that at the meeting with Claimant, in April 1995, they agreed to phase out short term trading and begin to establish a more extensive and permanent portfolio. Respondent Miceli maintained that she did not take this to mean that she should stop trading immediately. Respondent Miceli again maintained that Claimant did not express concern with the handling of the account until she received the letter from Mr. Sicuranza.

Respondent Stuart Coleman denied the allegations of Claimant with respect to failure to supervise and breach of fiduciary duty. Respondent Stuart Coleman further denied that they committed fraudulent actions against Claimant. Respondent Stuart Coleman maintained that the account was traded as a discretionary account due to the Limited Power of Attorney form signed by Claimant allowing Respondent Miceli to trade the account and the representations made by Respondent Miceli as to the relationship between Claimant and herself. Respondent Stuart Coleman maintained that when the account took a loss of \$26,000.00 Respondent Miceli was cautioned and questioned, and two letters were sent to Claimant regarding the activity in the account. Respondent Stuart Coleman further maintained that these actions demonstrated a high level of supervision over Claimant's account and the actions of Respondent Miceli.

Respondent Stuart Coleman offered the following affirmative defenses: 1) the Statement of Claim fails to state a supportable claim; 2) Claimant is barred from recovery because she authorized and signed a written Power of Attorney in favor of Respondent Miceli; 3) Claimant assumed the risks of trading and any losses were solely out of Claimant's desire to achieve quick trading profits; 4) no misrepresentations of materials were made by Respondent Stuart Coleman on which Claimant relied; 5) Claimant ratified all transactions in the account; 6) the investments in Claimant's account were not unsuitable in this case, and 7) punitive damages are not available in this case as a matter of law.

#### **RELIEF REQUESTED**

Claimant requested:

(a) Compensatory damages in an amount equal to:

(1) \$14,281.00 from Respondent Miceli to cover the net trading losses suffered by Claimant from the unsuitable short-term and index trading by Respondent Miceli in Claimant's Balis account.

(2) \$54,967.00 from Respondents Stuart Coleman and Miceli to cover the net trading losses suffered by Claimant's Stuart Coleman account.

(3) Such amounts from Respondent Stuart Coleman as the panel may determine in connection with the excessive trading of Claimant's Stuart Coleman accounts and the applicable parties' collection of commissions in connection therewith.

(4) Such amounts as may be determined by the panel in connection with the fraudulent actions by Respondents Miceli and Stuart Coleman as specified hereinabove.

- (b) punitive damages in such amount as the panel may determine.
- (c) interest on the compensatory damages awarded from the date of loss.
- (d) forum fees and expert witness costs and reasonable attorneys' fees.

Respondent Miceli requested that the Statement of Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. 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.
2. Claimant dismissed Respondent Schroder from this arbitration as evidenced by the Notice of Dismissal signed on November 15, 1996.
3. Claimant dismissed Respondent Balis from this arbitration as evidenced by the Notice of Dismissal signed on June 05, 1997.
4. Respondent Stuart Coleman withdrew their cross and counter claims at the hearing.

### **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:

- (1) Respondent Miceli and Stuart Coleman are liable and shall pay to Claimant the sum of \$27,485.00;
- (2) The parties shall bear their respective costs, including attorney's fees; and,
- (3) All other requests for relief are denied.

### **FORUM FEES**

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have assessed the following Forum fees:

4 Pre-hearing conferences x \$300.00	=	\$ 1,200.00
12 Hearing sessions x \$750.00	=	<u>\$ 9,000.00</u>
<b>Total Forum Fees</b>	=	<b>\$10,200.00</b>

- (1) Claimant is liable and shall pay NASD Regulation, Inc. the sum of \$3,400.00 representing one-third of the forum fees assessed, less \$500.00 previously deposited, leaving \$2,900.00 due.
- (2) Respondent Miceli is liable and shall pay NASD Regulation, Inc. the sum of \$3,400.00

ARBITRATORS' SIGNATURES

I, Robert Herschman, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above referenced matter.

  
Robert D. Herschman, Esq.

I, Herbert Geiger, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above referenced matter.

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Herbert Geiger, Esq.

I, William Scholz, do hereby affirm, pursuant to Article 7505 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above referenced matter.

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William Scholz

Date of Decision: December 09, 1997

ARBITRATORS' SIGNATURES

I, Robert Herschman, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above referenced matter.

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Robert D. Herschman, Esq.

I, Herbert Geiger, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above referenced matter.

  
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Herbert Geiger, Esq.

I, William Scholz, do hereby affirm, pursuant to Article 7505 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above referenced matter.

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William Scholz

Date of Decision: December 09, 1997