

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Melva J. Lack and Dawn D. Buckley,

Claimants,

and

No. 96-02135

Signal Securities, Inc. and Jerry K. Lack,

Respondents.

REPRESENTATION OF PARTIES

Claimants, Melva J. Lack and Dawn D. Buckley, were represented by Steven K. Terry, Esquire of Terry & Newsom, L.L.P., located in Dallas, Texas.

Respondent, Signal Securities, Inc., was represented by Robert F. Watson, Esquire and Kelley B. Hill, Esquire of Law, Snakard & Gambill, located in Fort Worth, Texas.

Jerry K. Lack was not represented in pleadings or at the hearing in this matter.

CASE INFORMATION

Melva J. Lack and Dawn D. Buckley's Statement of Claim was filed on or about May 17, 1996.

Melva J. Lack and Dawn D. Buckley's Submission Agreement was signed on April 24, 1996.

Signal Securities, Inc.'s Statement of Answer was filed on or about August 12, 1996.

Signal Securities, Inc.'s Amended Statement of Answer was filed on or about August 13, 1996.

Signal Securities, Inc.'s Submission Agreement was signed on July 8, 1996 by Jerry Singleton, President of Signal Securities, Inc.

HEARING INFORMATION

The hearing was held on: June 24, 1997 for two (2) sessions; and June 25, 1996 for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimants, Melva J. Lack ("Ms. Lack") and Dawn D. Buckley (hereinafter collectively referred to as "Claimants") brought this action to recover losses allegedly sustained through the investment recommendations of Jerry K. Lack ("Mr. Lack") while he was a registered representative of Signal Securities, Inc. ("Signal").

Claimants alleged that Mr. Lack made recommendations involving speculative investments, which Ms. Lack purchased, that were unsuitable to her stated investment objectives and contrary to her known financial status. Claimants asserted that Mr. Lack's recommendations resulted in Ms. Lack making investments of \$50,000 on October 29, 1992 in Automobile Credit Finance 1992-II, Inc. and \$10,000 on October 31, 1994 in Automobile Credit Finance VI, Inc., which were unsecured and extremely risky investments in corporations that, in 1995, defaulted on the notes and were forced into bankruptcy. Claimants further asserted that in May 1993 Mr. Lack recommended that Ms. Lack open a margin account and immediately borrow \$90,000 to purchase Series A 12% Cumulative, Convertible Preferred Stock in InterAmerican Petroleum Corporation; according to Claimants, although Ms. Lack received dividends in the amount of \$900 more or less on a monthly basis from June 1993 until May 1994, she did not receive the preferred stock that she purchased, but, rather, received 90,000 shares of common stock from Mr. Lack in December. Claimants argued that the actual risk of loss by each of the investments were great and contrary to the favorable representations and recommendations made by Mr. Lack in convincing Ms. Lack to purchase the securities.

Claimants made the following claims: (1) unsuitability; (2) misrepresentations and omissions of material facts; (3) failure to adequately explain the characteristics of a margin account and over-leveraging; (4) broker negligence and ignorance; (5) state law violations including deceptive trade practice violations, common law fraud, fraud in the sale of stock, securities fraud, and breach of contract; and (6) joint and several liability of Signal.

Signal denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Signal stated that the Automobile Credit Finance securities purchased by Claimants were suitable to their stated investment objectives and their financial status, and the risk of default and the nature of the credits were adequately disclosed in writing and otherwise to Claimants before their purchases. Signal denied that Mr. Lack made any untruthful promises or recommendations concerning the subject investments in the Automobile Credit Finance securities and believed that the nature of the investment, its characteristics and risks, were fully disclosed to Claimants orally and in the written materials provided to them, which they signed and acknowledged. Signal further stated that the margin account documents signed by the Claimants fully disclosed the nature of a margin account and the fact that securities might have to be liquidated to pay margin loans, involuntarily if necessary. Signal argued that the InterAmerican Petroleum Corporation securities Claimants invested

in were not purchased from or through Signal and that it has no liability or responsibility therefor.

Signal made the following affirmative defenses: (1) the Deceptive Trade Practices Act is not applicable to the purchase and sale of securities; (2) any dealings that Claimants had with Mr. Lack in connection with InterAmerican Petroleum Corporation were outside the course and scope of any employment, contractual or agency relationship between Mr. Lack and Signal, and Signal was not aware of the InterAmerican Petroleum Corporation transactions, or any statements made by Mr. Lack in connection therewith, and Signal received no benefits from such transactions; (3) Signal's liability, if any, is limited to the percentage of its negligence, if any, compared to the total negligence attributed to all persons, including Claimants and others not party to this action, as required by Chapter 33 of the Texas Civil Practices & Remedies Code; and (4) the claims relating to control person liability are not applicable to Signal because it did not know, and in the exercise of reasonable care could not have known, of the existence of facts by which the liability exists, if any, of Mr. Lack, under the Texas Securities Act.

RELIEF REQUESTED

Claimants, Melva J. Lack and Dawn D. Buckley requested an award for: liquidated amounts of \$60,000 for the Auto Credit Finance Notes, \$90,000 for the InterAmerican Petroleum Corp., \$11,842.23 for interest on margin account, and \$20,000 for loss due to sale of The George Putnam Fund interest to payoff Signal Securities, Inc. margin account; interest on Auto Credit and InterAmerican funds from date of investments until repaid; and attorney's fees and expenses.

Signal Securities, Inc. denied any liability to Melva J. Lack and Dawn D. Buckley, requested its costs and expenses and attorneys fees in defending their claims, and requested such other and further relief to which it shows itself justly entitled.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Jerry K. Lack did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration or an answer, but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. Office of Dispute Resolution.

AWARD

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

1. That Jerry Lack is liable for (a) return of the \$90,000 investment in InterAmerican Petroleum Corporation; plus (b) interest at 12% per annum on the \$90,000 from the date of investment; plus (c) margin interest paid by Melva J. Lack; plus (d) attorneys' fees of \$19,625 incurred in connection with pursuing her claim; less (e) dividends Melva J. Lack received on the stock;
2. That upon payment of the foregoing, Melva J. Lack and Dawn D. Buckley shall return any stock and relinquish any ownership in InterAmerican Petroleum Corporation;
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were four (4) hearing sessions x \$750 = \$3,000 in forum fees. Pursuant to § 10332(b) of the NASD 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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Melva J. Lack and Dawn D. Buckley.

Melva J. Lack and Dawn D. Buckley are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution additional forum fees in the amount of \$250 (= $\frac{1}{3}$ \$3,000 total forum fees - \$750 hearing session deposit).

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Signal Securities, Inc.

Pursuant to § 10333 of the Code, Signal Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$350.

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Signal Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,000 (= 1/3\$3,000 total forum fees).

Jerry K. Lack is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,000 (= 1/3\$3,000 total forum fees).

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

Concurring Arbitrators' Signatures

/s/ Franklin A. Arnold

July 3, 1997

Franklin Anthony Arnold, Esquire
Chairperson
Public Arbitrator

Dated:

/s/ James A. Hayden II

July 1, 1997

James A. Hayden, II
Panelist
Public Arbitrator

Dated:

/s/ James M. Benson

July 3, 1997

James Mervin Benson, Jr., Esquire
Panelist
Industry Arbitrator

Dated:

For NASD use only:

Date Award was served on the parties: July 8, 1997