

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Salvatore & Regina Butera

96-02159

Name of Respondents

Geoffrey Newman
J.B. Hanauer & Co.

REPRESENTATION

For Claimants: Lloyd De Vos, Esq. of the law firm of De Vos & Co., New York, NY.

For Respondents: Scott L. Warfman, Esq. of the law firm of Bloom & Warfman, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: May 20, 1996.

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

Joint Statement of Answer of Respondents dated: August 9, 1996.

Respondent Geoffrey Newman's Submission Agreement signed on: August 1, 1996.

Respondent J.B. Hanauer & Co's Submission Agreement signed on: June 13, 1996.

HEARING INFORMATION

Two telephonic pre-hearing conferences were conducted on January 28, 1997 and February 27, 1997 and six hearing sessions were conducted in Tampa, Florida on March 12, 13, and 14, 1997.

CASE SUMMARY

Claimants alleged that Salvatore ("Sal") and Regina ("Gina") Butera were introduced to J.B. Hanauer & Co. ("Hanauer") and Geoffrey Newman ("Newman") by Sal's father, Vito and Vito Butera had purchased one municipal bond from Newman.

Claimants alleged that Sal was a baseball player who was aware that his compensation would significantly decrease in a few years and Sal and Gina wanted to invest his World Series money and savings into a safe investment that would provide a check every month with the principal being available at the end of the investment. Claimants alleged that their investment objective, as stated on the account opening card and confirmed by a second Hanauer representative, was tax-free income and the income was to be used to pay a home mortgage payment and the principal was to be used for college educations for their children.

Claimants next alleged that Gina discussed the situation with Newman and Newman told Gina that an investment of approximately \$175,000.00 would yield enough income to make their mortgage payments, together with tax return refunds, at a return of approximately 7.5%. Claimants alleged that Gina confirmed this number with Vito and the 7.5% return was comparable to market returns then being paid by tax-free, investment grade municipal securities.

Claimants next alleged that Newman proceeded to place the Buteras into limited partnership interests and junk bonds as well as municipal securities and Newman represented to the Buteras that all of the investments met the investment objectives of the Buteras when the investments did not do so. Furthermore, Claimants alleged Newman also proceeded to churn the municipal bonds in the Butera's portfolio by selling them bonds paying higher interest rates on their face without explaining the premium or discount effect in the purchase price on their yield.

Claimants alleged they trusted Newman and relied upon his advice. Claimants alleged that Newman did not send any prospectuses to the Buteras and despite repeated requests, Newman did not send any written information to the Buteras from which they could judge the value of their portfolio and Hanauer did not send monthly or quarterly statements to the Buteras.

Claimants next alleged Hanauer and Newman earned commissions on the sale of the limited partnership interests and junk bonds which were in excess of the commissions which they would have earned had they placed the Butera's funds into municipal, investment grade securities and Hanauer and Newman earned commissions on the churning of the municipal securities sold to the Buteras.

Claimants alleged until 1993, Newman was unsupervised in his handling of the Butera account. Further, Claimants alleged in 1993, J.B. Hanauer & Co. instituted supervisory controls over Newman, but these controls did not apply to the Butera account. Claimants alleged that Newman left the employment of J.B. Hanauer & Co. in 1995 and after the end of Newman's

employment with J.B. Hanauer & Co., Hanauer conducted an internal review of Newman's accounts and contacted the customers based on the irregularities it found, but did not contact the Buteras.

Claimants next alleged since Newman's termination, numerous claims have been filed against Newman and J.B. Hanauer & Co. for questionable activities conducted by Newman including, but not limited to, misrepresentation, churning and forgery.

Claimants then alleged when the Buteras contacted Hanauer in 1995, they were told that Newman had left, that they had lost approximately half of their investment and that it was their fault.

Respondents maintained that the Claimants filed suit seeking damages of approximately \$84,000.00 based on their purchase of (1) several limited partnership securities (Polaris IV, Polaris V, PLM III, PLM IV and Krupp Cash IV) during 1988 and 1989, and (2) a corporate bond issued by Rogers Cablesystems, Inc. during January 1994. The Respondents maintained that the Claimants alleged that the Respondents misrepresented the risks associated with these investments and promised a specified annual return of 7.5%. The Respondents denied these allegations and affirmatively pled that the Claimants received prospectuses for all of these securities which fully informed the Claimants of the risks associated with each investment. Therefore, the Respondents maintained that the Claimants suffered no damages and the Statement of Claim should be dismissed with prejudice.

RELIEF REQUESTED

Claimants requested that the arbitrators place them in the position in which they would have been had Hanauer and Newman invested their funds in the investment grade municipal securities which comprised their investment objective. Alternatively, Claimants requested compensatory damages from Hanauer and Newman in the sum of \$84,000.00 plus simple interest at the rate of 7% per annum from the date of the Statement of Claim to the date of decision plus an award of their attorneys' fees.

Respondents requested a dismissal of the claim with prejudice, and further requested that they be awarded their reasonable costs, exclusive of attorneys' fees, incurred by them in defending the claim.

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.

Just prior to the commencement of the first evidentiary hearing, the Claimants made a Motion to Amend the Statement of Claim which was opposed by the Respondents. The arbitration panel denied the Motion to Amend the Statement of Claim.

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. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimants the sum of \$90,000.00, pre-judgment interest specifically excluded.
2. Pursuant to Rule 10330(h) of the Code of Arbitration Procedure, this Award shall be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$3,800.00 (one pre-hearing conference-panel (\$500.00) plus one pre-hearing conference-Chairperson (\$300.00) plus six hearing sessions x \$500.00) are assessed as follows:

The Claimants are assessed, jointly and severally, the sum of \$1,900.00 for which NASD Regulation shall retain the \$500.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation in the sum of \$1,400.00.

The Respondents are assessed, jointly and severally, the sum of \$1,900.00.

NASD Regulation shall retain the \$150.00 claim filing fee previously paid by the Claimants to NASD Regulation.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/
James A. Cormack

/S/
Hal S. Holsinger

/S/
Harold C. Anders

Date of Decision: April 8, 1997