

NASD Regulation, Inc. Award

In the Matter of Arbitration Between

Tommy Thompson, Individually and
as Executor of the Estate of Aileen Thompson,

Claimants,

and

Case No. 96-02458

Meyers Pollock Robbins, Inc.,
D.H. Blair & Company,
H.J. Meyers & Company, Inc.,
Stephen Carrella,
Michael Phillips,
Ted Vaughan,
Thomas Meehan,
Michael Mullins,
Schneider Securities, Inc., and
International Asset Advisory Corporation,

Respondents.

REPRESENTATION OF PARTIES

Claimants, Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson ("Thompson"), were represented by William S. Shepherd, Esquire and B. Rebecca Hamric, Esquire of William S. Shepherd & Associates located in Houston, Texas.

Respondent, Meyers Pollock Robbins, Inc. was not represented at the hearing yet was represented in the pleadings by Louis H. Myron, Esquire located in Westfield, New Jersey.

CASE INFORMATION

Claimants, Thompson's Statement of Claim was filed on or about June 10, 1996.

Claimant, Tommy Thompson's Submission Agreement was signed on June 13, 1996.

Claimant, Tommy Thompson as Executor of the Estate of Aileen Thompson's Submission Agreement was signed on June 13, 1996 by Tommy Thompson.

Respondent, Meyers Pollock Robbins, Inc.'s Statement of Answer and Cross-Claims was filed on or about October 27, 1996.

Respondent, Meyers Pollock Robbins, Inc.'s Submission Agreement was signed on October 28, 1998 by Michael Ploshnick, President.

HEARING INFORMATION

A pre-hearing conference before three arbitrators was held on November 7, 1997 for one (1) hearing session.

The hearing was held before three arbitrators on April 27, 1998 for one (1) hearing session.

The hearing was held in Houston, Texas.

CASE SUMMARY

Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson, ("Claimant"), brought this action to recover monies from the Respondents for their execution of more than 1000 trades in highly speculative stocks and options, including on margin, in Claimant's accounts.

Claimant contended that in 1992 he was enticed to deposit almost \$700,000 with the Respondents, for himself and for his elderly mother and uncle, which represented nearly all their net worth. Claimant alleged that the numerous trades executed by Respondents earned Respondents an estimated \$350,000 in commissions and fees yet left Claimants with less than \$50,000 in remaining assets.

According to the Claimants, the Respondents misrepresented their capabilities and intentions with the assets Claimants entrusted to them. Respondents allegedly violated the rules of various securities associations and exchanges and did not afford Claimants fair treatment required by the regulatory bodies. As alleged, Respondents knew of Claimant, Tommy Thompson' lack of sophistication, experience and knowledge and the incapacity of Aileen Thompson and also knew that Claimants did not have the financial resources, liquidity, income or earning power to enter into high risk investments. Nevertheless, Respondents allegedly recommended and entered into 1000 transactions for Claimant, some on margin, without reasonable grounds to believe such recommendations were suitable for them. Respondents excessively traded the Claimants' accounts and failed to provide proper supervision of their agents. Claimants made specific allegations against the Respondents including, but not limited to, breach of contract and warranties, violations of the Texas Deceptive Trade Practices Act, violations of the Texas Securities Statutes, violations of Section 27.01 of the Texas Business and Commerce Code and violations of the Federal Securities Exchange Act.

Respondent, Meyers Pollock Robbins, Inc. ("MPR") denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. While denying any responsibility for the

NASD Regulation, Inc. Office of Dispute Resolution, Inc.
Arbitration Case No. 96-02458
Award - Page 3 of 6

alleged damages, MPR asserted that, in the event that MPR was found responsible in whole or in part to Claimants, MPR requested total indemnification and/or contribution from all other Respondents. MPR asserted many affirmative defenses including, but not limited to, failure to state a claim; ratification; assumption; the alleged losses were caused by third parties and/or events and conditions in the world economic market; failure to mitigate; failure to exercise due care and diligence; contributory or comparative negligence; and the claims were barred by relevant statutes of limitations.

RELIEF REQUESTED

Claimants, Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson, requested an award for no greater than \$1,000,000 in actual and punitive damages plus costs and interest.

Respondent, Meyers Pollock Robbins, Inc. requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees. Respondent, Meyers Pollock Robbins, Inc. also sought indemnification and total contribution from all other Respondents in the event that it was found responsible in whole or in part to the Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimants, Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson, the undersigned arbitrators have determined that Respondent, Meyers Pollock Robbins, Inc. had been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent, Meyers Pollock Robbins, Inc. had received due notice of the hearing as required under § 10318 of the Code.

At the hearing, Claimant orally stated that he settled his claims against Respondent, Stephen Carrella. On or about May 7, 1998, Claimant and Respondent, Stephen Carrella submitted a joint motion for an agreed award reflecting the terms of their agreement. According to the motion, Respondent, Stephen Carrella will pay to Claimant a total of \$50,000, without interest, by making an initial payment of \$3,000 on or before the first day of May of 1998 and will pay 47 additional payments of \$1,000 each on or before the first day each month, beginning June of 1998 until May of 2002. The motion also allowed that any failure of payment would be considered an untimely payment and a default of payment.

Claimant settled his claims against Respondents, Schneider Securities, Inc. and H.J. Meyers & Company, Inc. on or about February 5, 1997. Claimant dismissed with prejudice his claims against

NASD Regulation, Inc. Office of Dispute Resolution, Inc.
Arbitration Case No. 96-02458
Award - Page 4 of 6

Respondents, Michael Phillips, Ted Vaughan, and International Asset Advisory Corporation on or about September 18, 1997. Claimant settled his claims against Respondents, D. H. Blair & Company, Thomas Meehan and Michael Mullins on or about April 21, 1998. Therefore, Claimants proceeded with their claims against Respondent, Meyers Pollock Robbins, Inc. only at the merits hearing.

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies and 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 as well as the post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Meyers Pollock Robbins, Inc. is liable for and shall pay to the Claimants, Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson, \$266,064 in actual damages;
2. Respondent, Meyers Pollock Robbins, Inc. is liable for and shall pay to Claimants, Tommy Thompson, Individually and as the Executor of the Estate of Aileen Thompson, \$133,226 in pre-judgement interest.
3. Respondent, Meyers Pollock Robbins, Inc. is liable for and shall pay to Claimants, Tommy Thompson, Individually and as the Executor of the Estate of Aileen Thompson, \$150,000 in punitive damages.
4. Respondent, Meyers Pollock Robbins, Inc. is liable for and shall pay to Claimants, Tommy Thompson, Individually and the Executor of the Estate of Aileen Thompson, \$187,866 in attorneys' fees. In determining to award interest, punitive damages and attorneys' fees, the undersigned arbitrators also considered the legal authority provided by the Claimants which included the Texas Deceptive Trade Practices - Consumer Protection Act, the Texas Securities Act, Texas contract law and the Texas Fraud Statute as well as Section 27.01 of the Texas Business and Commerce Code.
5. Respondent, Stephen Carrella will pay to Claimants, Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson, a total of \$50,000, without interest, by payment of \$3,000 on or before the first day of May of 1998 and will pay forty-seven additional payments of \$1,000 each on or before the first day each month, beginning June

NASD Regulation, Inc. Office of Dispute Resolution, Inc.

Arbitration Case No. 96-02458

Award - Page 5 of 6

of 1998 until May of 2002. Any failure of payments as stated herein, or of consideration of that payment, will be considered untimely payment and a default of payment ordered in this award.

6. The Cross-Claims of Respondent, Meyers Pollock Robbins, Inc. are denied in their entirety and dismissed with prejudice.
7. 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 in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session. There were two (2) hearing sessions x \$1,000 = \$2,000 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$250 and shall retain as forum fees the hearing session deposit of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants. The NASD Regulation, Inc. Office of Dispute Resolution shall also retain the non-refundable filing fee of \$500 and shall retain as forum fees the hearing session deposit of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, Meyers Pollock Robbins, Inc. Respondent, Meyers Pollock Robbins, Inc. is liable for and shall pay to Claimant, Tommy Thompson, Individually and as Executor of the Estate of Aileen Thompson, the sum of \$1,000 as reimbursement of the hearing session deposit.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$500 member surcharge previously paid by Respondent, D.H. Blair & Company, Inc., the \$500 member surcharge previously paid by International Asset Advisory Corporation and the \$500 member surcharge previously paid by Respondent, Meyers Pollock Robbins, Inc.. Respondent, H.J. Meyers & Company, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$500 for its member surcharge. Respondent, Schneider Securities, Inc. is liable for and shall pay to the NASD Regulation Office of Dispute Resolution the sum of \$500 for the member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures

NASD Regulation, Inc. Office of Dispute Resolution, Inc.
Arbitration Case No. 96-02458
Award - Page 6 of 6

David G. Beerbower, Esquire
David G. Beerbower, Esquire
Chairperson
Public Arbitrator

June 11, 1998
Dated:

Robert Bundschuh
Robert Bundschuh
Panelist
Public Arbitrator

June 12, 1998
Dated:

Eli Bensky
Eli Bensky
Panelist
Industry Arbitrator

June 12, 1998
Dated:

For NASD use only:
Date Award was served on the parties: June 12, 1998