

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Harold A. Levin,

Claimant,

v.

No. 96-02928

J.E. Liss & Company, Inc.,
and Dennis Waisman,

Respondents.

REPRESENTATION OF PARTIES

Claimant Harold A. Levin ("Claimant") was represented by Paul R. Erickson, Esq. and Colleen M. Fleming, Esq. of Gutglass, Erickson & Bonville, S.C. located in Milwaukee, Wisconsin.

Respondents J.E. Liss & Company, Inc. ("J.E. Liss") and Dennis Waisman ("Waisman") (collectively referred to as "Respondents") were represented by Michael H. Schaalman, Esq. of Quarles & Brady located in Milwaukee, Wisconsin.

CASE INFORMATION

The Statement of Claim was filed on or about August 8, 1996.

Claimant's Submission Agreement was signed on July 8, 1996.

The Joint Statement of Answer was filed on or about January 22, 1997.

Respondent J.E. Liss' Submission Agreement was signed on January 31, 1997.

Respondent Waisman's Submission Agreement was signed on January 31, 1997.

Respondents' Post-Hearing Brief containing closing arguments was filed on or about February 27, 1998.

Respondents' Post-Hearing Brief in Support of Motion of Respondents to Dismiss Claims Based on Purchases of Securities Before August 8, 1990.

Claimant's Post-Hearing Brief in Opposition to Respondents' Motion to Dismiss Claims Based on Purchases of Securities Before August 8, 1990.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on June 2, 1997 for one (1) session and June 16, 1997 for one (1) session.

The hearing was held on: December 22, 1997 for two (2) sessions; December 23, 1997 for two (2) sessions; and February 6, 1998 for two (2) sessions. The hearing location was Milwaukee, Wisconsin.

CASE SUMMARY

Claimant alleged that Respondents solicited the sale of and sold to Claimant investments including: Vintage Income 90, St. Louis Leasing Corp, and Innovative Control Systems, as well as other investments. Claimant contended that these highly speculative and risky investments were unsuitable for Claimant based on his investment objectives. Claimant asserted that Respondents engaged in fraud and misrepresentation involving their failure to disclose the financial viability of the underlying companies and the risks associated with the investments, as well as J.E. Liss' own involvement with the investments. Claimant maintained that Respondents engaged in a continuum of negligent and/or intentional acts which violated the various federal and state securities laws, statutes, and the rules and regulations of the NASD and NYSE.

Respondents denied all liability to Claimant in the Statement of Answer. Respondents alleged that Claimant was a sophisticated investor with a high net worth who understood and acknowledged the risks involved with the investments at issue. Respondents maintained that they made the appropriate disclosures and the suitable recommendations for Claimant's investment objectives. Respondents asserted that Claimant received a Private Placement Memoranda specifically disclosing the risks involved in each of these investments, including the possibility that the principal in each investment could be lost. Respondents contended that Claimant made

independent judgments and decisions regarding each and every investment.

RELIEF REQUESTED

Claimant requested an award of the following: out-of-pocket damages in an amount not less than \$125,000; loss of invested capital; reimbursement of commissions; costs and expenses, including reasonable attorney fees; punitive and exemplary damages; and for such other and further relief as the arbitrators deem just and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

During the course of the hearing, Respondents moved for the dismissal of certain of Claimant's claims because they were based on purchases of securities which are not eligible for arbitration under Rule 10304 of the NASD Code of Arbitration Procedure ("Code"). After carefully considering the respective arguments of both parties, the panel has unanimously ruled to deny Respondents' Motion to Dismiss. With respect to the claims considered by the panel in making its award, the panel finds that the occurrence or event giving rise to this claim, specifically Respondents' post-purchase misconduct, occurred within the six (6) year time period specified in Rule 10304.

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 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) That Respondents J.E. Liss and Company, Inc. and Dennis Waisman are jointly and severally liable for and shall pay to Claimant Harold A. Levin the sum of \$30,000.00 constituting an award of damages for Claimant's losses in Vintage Income 90;
- (2) That Respondents J.E. Liss and Company, Inc. and Dennis Waisman are jointly and severally liable for and shall pay to Claimant Harold A. Levin the sum of \$20,000.00 constituting an award of damages for Claimant's losses in St. Louis Leasing Corporation / Arc Fund 0793i;
- (3) That Respondents J.E. Liss and Company, Inc. and Dennis Waisman are jointly and severally liable for and shall pay to Claimant Harold A. Levin the sum of \$10,000.00 constituting an award of damages for Claimant's losses in St. Louis Leasing Corporation / Arc Fund 0893i;
- (4) Claimant Harold A. Levin shall tender his interest in 6,000 shares of Innovative Control Systems, Inc. stock to Respondent J.E. Liss & Company, Inc. no later than two (2) weeks from receipt of this award. After receipt of the 6,000 shares of Innovative Control Systems, Inc. stock and not later than thirty (30) days from receipt of this award, Respondent J.E. Liss & Company, Inc. shall pay to Claimant Harold A. Levin the sum of \$15,000.00;
- (5) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (6) That any relief not specifically enumerated is 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 six (6) hearing session x \$750 = \$4,500 in forum fees. There were two (2) pre-hearing conferences x \$300 = \$600 in forum fees. Total forum fees = \$5,100. Pursuant to §10332(b) of 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as postponement fees the hearing session deposit in the amount of \$750 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondents are jointly and severally liable for and shall pay all forum fees in the amount of \$5,100.

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

Concurring Arbitrators' Signatures:

\s\ Emanuel V. Gumina, Esq.

Emanuel V. Gumina, Esq.

Chairperson

Public Arbitrator

March 16, 1998

Dated:

\s\ James F. Parsons

James F. Parsons

Panelist

Public Arbitrator

March 17, 1998

Dated:

\s\ Amy J. Wenzler

Amy J. Wenzler

Panelist

Industry Arbitrator

March 16, 1998

Dated:

For NASD Regulation use only:

Date award served on parties:

March 26, 1998