

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Nardo Zaias
Nardo Zaias C/F Julia Zaias
Nardo Zaias and Magaly Zaias
Nardo Zaias C/F Julia Zaias
Magaly Zaias
Magaly Zaias C/F Alessa Zaias
Magaly Zaias C/F Pedro Zaias
Biophile, USA

96-02956

Names of Respondents

Shochet Securities, Inc.
Diane P. Dymek
Leila Kay Shuminer

REPRESENTATION

For Claimants: Evelyn M. Merchant, Esq. of Adorno & Zeder, P.A., Miami Beach, Florida.

For Respondents: Katherine Nathan, Esq. of Shochet Securities, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed: July 10, 1996.

Claimants' Submission Agreements signed as follows:

By Nardo Zaias on: October 18, 1995.

By Nardo Zaias as Custodian for Julia Zaias on: October 18, 1995.

By Julia Zaias on: October 18, 1995.

By Magaly Zaias on: October 18, 1995.

By Magaly Zaias as Custodian for Alessa Zaias on: October 18, 1995.

By Magaly Zaias as Custodian for Pedro Zaias on: October 18, 1995.

By Nardo Zaias on behalf of Biophile, USA on: July 8, 1996.

Joint Statement of Answer filed by Respondents Shochet Securities, Inc. ("Shochet"), Leila Kay Shuminer ("Shuminer") and Diane Dymek ("Dymek") on: October 14, 1996.

Respondent Shochet's Submission Agreement/Corporate Acknowledgment signed on: January 23, 1997 by Katherine Nathan on behalf of the firm.

Respondent Shuminer's Submission Agreement signed on: September 25, 1996.

Respondent Dymek did not file an executed Submission Agreement.

HEARING INFORMATION

On September 19, 1997, December 1, 1997 and February 3, 1998 the Chairperson conducted telephonic pre-hearing conferences which lasted three (3) sessions.

On March 6, 1998 the arbitration panel conducted a telephonic pre-hearing conference which lasted one (1) session.

Hearings lasting a total of fifteen (15) sessions were conducted in Fort Lauderdale, Florida on the following dates: September 23, 24 and 25, 1997; December 3 and 4, 1997; and, March 17, 18 and 19, 1998.

CASE SUMMARY

Claimants alleged that Nardo and Magaly Zaias came into contact with Respondent Shuminer through Henry German ("German") who was managing money for Claimants and had accounts for Claimants with Shuminer at Prudential Bache Securities, Inc. and that although German had absconded with a great deal of money from the Claimants, Claimants had no reason to believe that there was any wrongdoing on behalf of Shuminer with respect to German's actions. Claimants further alleged that when they met with Shuminer she advised them that she could do a good job for them and that Claimants trusted Shuminer and initially opened the Julia Zaias Trust Account and transferred other accounts to her; that at all times Claimants made it clear that as a result of the loss they suffered with German, they wanted to be very conservative to protect their limited remaining savings; that in particular, as to the Julia Zaias account, they made it clear that this was Julia Zaias' trust fund to be used to support herself through college; and, that as to the other accounts, Claimants re-emphasized their desire to have a conservative investment program. Claimants maintained that Shuminer ignored their investment objectives and engaged, to her benefit, in excessive trading in Claimants' accounts and that Shuminer not only churned the accounts for her own benefit, but failed to manage the accounts consistent with the Claimants' investment objectives. Claimants further maintained that Respondent Shuminer intentionally misled them as to the success of their accounts; that Shuminer made misrepresentations to the Claimants with respect to the profits in the accounts; and, that Claimants questioned Shuminer on a couple of occasions as to the high turnover and losses in the account but that at all times Shuminer represented to the Claimants that she was the expert and that Claimants should trust her. Claimants asserted that Respondent Dymek was a registered representative and Shuminer's manager and as such is directly responsible for training, supervising and monitoring Shuminer and as a result, is liable for the wrongful acts of Shuminer.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and asserted that Claimants originally opened a brokerage account which was serviced by Shuminer in 1986 when Shuminer was employed as an account executive for Prudential Bache Securities, Inc.; that Claimant Nardo Zaias is a successful dermatologist and international businessman; that Claimants were sufficiently pleased with the handling of the account that they elected to transfer their accounts to Shochet when Shuminer changed employment in 1989; that subsequent to that date, Claimants opened up numerous accounts for various family members and business entities which were serviced by Shuminer at Shochet; that in all, ten accounts were opened by Claimants at Shochet of which eight appear to be the subject of this claim. Respondents further asserted that Respondent Dymek is an unregistered sales assistant whose only functions relating to Claimants' accounts were of a clerical nature; that because Dymek is not registered, she is not subject to the jurisdiction of the NASD. Respondents maintained that Claimants were sophisticated investors who were deeply involved in all decisions relating to their accounts; that Claimants were fully aware of the risks as well as the potential rewards in their investing strategy; that Claimants authorized and monitored the purchases in their accounts; and, that it is only with the benefit of hindsight that Claimants now regret some of their decisions which have proven to be less profitable than they had hoped. Respondents asserted that Claimants must take full responsibility for their investment decisions.

RELIEF REQUESTED

Claimants requested entry of an award of compensatory damages of not less than \$100,000.00 for losses in the accounts, commissions, punitive damages of \$1,000,000.00, attorneys' fees and costs related to this action.

Respondents requested a dismissal of the claim, attorneys' fees and that Claimants be assessed all costs and expenses of this proceeding. Respondents further requested that the Central Registration Depository ("CRD") records of Dymek and Shuminer be expunged of any and all references to this matter.

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 originals remain on file with NASD Regulation, Inc.

Respondent Dymek did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

During the hearing on September 23, 1997, the parties stipulated on the record to the dismissal, with prejudice, of Respondent Dymek. The parties also stipulated to the expungement of any and all references to this arbitration from Respondent Dymek's CRD record with NASD Regulation, Inc. Thereafter, this matter proceeded with the Claimants and Respondents Shochet and Shuminer.

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. Respondents Shochet and Shuminer are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' requests for interest, attorneys' fees, costs and punitive damages are hereby denied.
3. Respondents' request for the expungement of Respondent Shuminer's CRD record is hereby denied.
4. Respondents' request for attorneys' fees is hereby denied.
5. As stated above, Respondent Dymek's CRD record with NASD Regulation, Inc. shall be expunged of any and all references to this proceeding.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four sessions or less.

Pursuant to Rule 10332(c) of the Code, the arbitration panel has assessed forum fees in the amount of \$16,900.00 (fifteen (15) hearing sessions x \$1,000.00 + one (1) pre-hearing conference (panel) x \$1,000.00 + three (3) pre-hearing conferences (Chairperson only) x \$300.00).

1. The Claimants are hereby assessed forum fees, jointly and severally, in the amount of \$12,675.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by the Claimants in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Claimants of \$11,675.00.
2. Respondents Shochet and Shuminer are hereby assessed forum fees, jointly and severally, in the amount of \$4,225.00.

OTHER FEES

1. Pursuant to Rule 10332 of the Code, Claimants have paid to NASD Regulation, Inc. the claim filing fee of \$250.00.
2. Pursuant to Rule 10333 of the Code, Respondent Shochet has paid to NASD Regulation, Inc. the \$500.00 member surcharge which was previously invoiced.

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

ARBITRATORS

Concurring Arbitrators' Signatures

 /s/
Gary W. Pollack, Esq.

Public/Chairperson

 /s/
Sylvia R. Cohen

Public/Panelist

 /s/
Daniel H. Yaffe

Industry/Panelist

Date of Decision: July 2, 1998