

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

- Thomas Bright and Karen Bright, and Thomas Bright, IRA,

Claimants,

and

No. 96-03010

Nichols, Safina, Lerner & Co., Steven Iannuzzi,

Respondents,

REPRESENTATION OF PARTIES

Claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA were represented by Steven J. Gard, Esquire of Page & Bacek located in Atlanta Georgia.

Respondents Nichols, Safina, Lerner & Co., Steven Iannuzzi were represented by Evan L. Gordon, Esquire of New York, New York.

CASE INFORMATION

Claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA's Statement of Claim was filed on or about July 15, 1996. Claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA's Submission Agreement was signed on July 8, 1996.

Respondent Nichols, Safina, Lerner & Co., Steven Iannuzzi's Statement of Answer was filed on or about September 10, 1996. Respondent Nichols, Safina, Lerner & Co.'s Submission Agreement was signed on August 20, 1996 by Chee Eng, Compliance Director of Nichols, Safina, Lerner & Co. Respondent Steven Iannuzzi's Submission Agreement was signed on August 20, 1996.

HEARING INFORMATION

A pre-hearing conferences was held on December 9, 1996 for one (1) session.

The hearing was held on: February 5, 1997 for two (2) sessions; and
February 6, 1977 for two (2) sessions.

The hearing was held in Nashville, Tennessee.

CASE SUMMARY

Claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA (hereinafter collectively referred to as "Claimants") alleged that respondent Steven Iannuzzi ("Mr. Iannuzzi"), their broker at respondent Nichols, Safina, Lerner & Co. ("Nichols"), made omissions and misrepresentations of material facts, made unsuitable investments in their accounts, and churned their accounts. Claimants asserted that they opened a joint account in August 1994 and an IRA for Thomas Bright in 1995 with respondent Nichols based on Mr. Iannuzzi's representations that Claimants' portfolio would outperform any blue-chip stock or municipal bond that they had ever owned without jeopardizing their principal. Claimants further asserted that Mr. Iannuzzi convinced them to trade on margin without ever explaining the associated risks. Subsequently, according to Claimants, Mr. Iannuzzi began to make a lot of purchase recommendations in stocks, many of which were highly speculative, and which were at times financed through selling other investments, as Mr. Iannuzzi also recommended. Claimants argued that Mr. Iannuzzi churned their accounts in order to generate commissions by executing purchases totalling \$897,478 and sales totaling 664,943, which created a turnover rate in their joint account of approximately 9.2 and a turnover rate in the IRA account of approximately 4.7. Finally, Claimants claimed that because Mr. Iannuzzi was not registered as a securities broker with the state of Tennessee from December 31, 1994 through February 14, 1995 and Nichols was not registered as a broker-dealer in Tennessee from December 31, 1994 through January 27, 1995, the following trades should not have been executed:

January 5, 1995: sell 6,000 shares of Chips & Technologies, Inc.;
January 9, 1995: buy 3,000 shares of President Riverboat Casinos;
January 10, 1995: buy 2,000 shares of IPC Information Systems, Inc.;
January 10, 1995: sell 2,000 shares of Moscom Corp.;
January 20, 1995: buy 2,500 shares of Bay Ridge Bancorp, Inc.;
January 23, 1995: sell 2,000 shares of IPC Information Systems, Inc.;
February 13, 1995: sell 2,500 shares of Bay Ridge Bancorp, Inc.

Consequently, Claimants alleged losses totaling approximately \$157,551.00. Claimants made the following legal claims: (1) breach of fiduciary duty; (2) violations of Tennessee securities laws, common law fraud, and misrepresentation; (3) breach of contract; and (4) negligence/breach of the NASD Rules of Fair Practice and the Rules of the New York Stock Exchange.

Respondents Mr. Iannuzzi and Nichols (hereinafter collectively referred to as "Respondents") denied the allegations set forth in the Statement of Claim. Respondents stated that Claimants were fully informed that Nichols' principal business was trading on a short term basis in high growth stocks, principally to obtain short term capital gain, and that in order to obtain short term capital gains through trading in aggressive growth stocks, there would be risk to principal. Respondents further stated that Thomas Bright was an experienced investor who informed Mr. Iannuzzi that his Nichols' account was not his principal investment account and was to be used for growth and speculation, not

income. According to Respondents, Claimants were also fully informed about the associated risks of trading on margin. In response to Claimants' allegations concerning Respondents' lack of registration, Respondents stated that their accounts payable department failed to pay the appropriate bills and failed to inform any of the brokers or principals. Respondents asserted that most of the losses in Claimants' accounts were due to Thomas Bright's suggestions, which were either for tax purposes or to purchase other securities, and that he requested that all of his securities be taken off margin, which resulted in realized losses. Respondents further asserted that all of the transactions were fully discussed in advance with Thomas Bright and he approved each of them in advance.

RELIEF REQUESTED

Claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA requested an award for: actual damages in excess of \$157,551.00; rescission of the trades in their account; punitive damages; costs, expenses, and disbursements, including attorneys' fees, associated with this arbitration proceeding; and pre-award and post-award interest.

Respondents Nichols, Safina, Lerner & Co. and Steven Iannuzzi requested that the claims asserted against them be dismissed.

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 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 respondent Nichols, Safina, Lerner & Co. is liable for and shall pay claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA compensatory damages in the amount of \$126,500.00;
2. That respondent Steven Iannuzzi is liable for and shall pay claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA compensatory damages in the amount of \$50,000.00; and

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 was one (1) pre-hearing conference session \times \$300 = \$300, and there were four (4) hearing sessions \times \$750 = \$3,000. Total forum fees are $\$300 + \$3,000 = \$3,300$. 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, 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 NASD Regulation, Inc. Office of Dispute Resolution by claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA.

The NASD Regulation, Inc. Office of Dispute Resolution shall reimburse claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA for their overpayment in the amount of \$300.

Respondent Nichols, Safina, Lerner & Co. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge pursuant to §10333 of the Code in the amount of \$350.

Respondent Nichols, Safina, Lerner & Co. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$2,550 (= \$3,300 total forum fees - \$750 hearing session deposit by claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA).

Respondent Nichols, Safina, Lerner & Co. is liable for and shall reimburse claimants Thomas Bright and Karen Bright, and Thomas Bright, IRA for their hearing session deposit in the amount of \$750.

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

Dated:

/s/ James Swiggart
James M. Swiggart, Esquire
Public Arbitrator, Presiding Chair

March 19, 1997

/s/ Lee Cowen
Lee Cowen
Public Arbitrator

March 25, 1997

/s/ R. Thomas Barksdale
R. Thomas Barksdale
Industry Arbitrator

March 17, 1997