

N.A.S.D. STIPULATED AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Frances E. Schweitzer

96-03074

Names of Respondents

Josephthal Lyon & Ross, Inc.
D. Blech & Company, Inc.
Brian Corday

REPRESENTATION

For Claimant: Frank A. Lightmas, Jr., Esq. of the law firm of Lightmas & Delk, Atlanta, Georgia.

For Respondent Brian Corday ("Corday"): Jeffrey M. Smith, Esq. of the law firm of Katz, Smith & Cohen, Atlanta, Georgia.

For Respondent D. Blech & Company, Inc. ("Blech"): Nancy Chassman, Esq., New York, New York.

For Respondent Josephthal Lyon & Ross, Inc. ("Josephthal"): R. Daniel Beale, Esq. of the law firm of Long, Aldridge & Norman, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed: July 18, 1996.

Claimant's Submission Agreement signed on: June 17, 1996.

Statement of Answer filed by Respondent D. Blech & Company, Inc. on: March 18, 1997.

Respondent D. Blech & Company, Inc.'s Submission Agreement signed on: May 2, 1996.

Statement of Answer filed by Respondent Josephthal Lyon & Ross, Inc. on: November 26, 1996.

Respondent Josephthal Lyon & Ross, Inc.'s Submission Agreement signed on: November 25, 1996.

Statement of Answer filed by Respondent Brian Corday on: November 25, 1996.

Respondent Brian Corday's Submission Agreement signed on: January 28, 1997.

HEARING INFORMATION

A pre-hearing conference was conducted with the arbitration panel on January 20, 1998.

CASE SUMMARY

Claimant alleged that she suffered losses in her account caused by Respondents, including Blech. Claimant alleged, among other things, that Respondents misrepresented the nature of the investments recommended, recommended unsuitable investments and churned Claimant's account.

Respondent Blech denied the material allegations in Claimant's Statement of Claim.

Respondent Corday alleged the following: While it is true that Frances E. Schweitzer ("Schweitzer") lost money in her Blech account, she did not lose \$135,000. Furthermore, it is not true that Schweitzer lost money in her Josephthal account. In fact, Schweitzer made money in the Josephthal account.

Respondent Corday asserted that the losses in the Claimant's Blech account were attributable to the following:

1. With the assistance of her son, Tony Gatewood, a registered representative at Blech, Schweitzer made investment decisions which caused the losses;
2. Although Schweitzer lost money in the stock market, by Schweitzer's own admission and conduct, she was a well informed investor who authorized the transactions and understood the risks of the stock market, the risk of trading securities and the risk of particular securities, including bio-tech securities;
3. Schweitzer gave Tony Gatewood, her son and a registered representative, power of attorney over her Josephthal account, which power was exercised by Mr. Gatewood to execute the transactions in that account; therefore, any losses claimed by Schweitzer while her account remained at Josephthal were caused by Schweitzer and Mr. Gatewood;
4. In all instances, Mr. Corday followed and carried out Schweitzer's instructions; and,
5. Schweitzer's action against Mr. Corday was brought as a result of her animosity toward Mr. Corday for refusing to interfere in Josephthal's decision not to hire Mr. Gatewood as a registered representative.

Respondent Josephthal alleged the following: Claimant opened two accounts with Respondent D. Blech & Company, Inc. in May 1994, depositing slightly more than \$300,000 derived from a divorce settlement. Respondent Brian Corday was Claimant's registered representative at Blech. Respondent Corday was introduced to Claimant by Claimant's son, Tony Gatewood, who was also an employee of Blech.

In September 1994, Respondent Corday left Blech and moved to Respondent Josephthal Lyon & Ross, Inc. Claimant chose to transfer her accounts to Josephthal and to continue doing business with Corday. Shortly thereafter, Claimant executed a power of attorney giving her son, Tony Gatewood, authority to direct the trading in her accounts. Tony Gatewood was never an employee of Josephthal. Claimant transferred her accounts away from Josephthal in May 1995.

Respondents Corday and Josephthal denied that Claimants' accounts were churned, denied that the investments were unsuitable and denied that their nature was misrepresented to Claimant. Respondents

Corday and Josephthal asserted that the accounts at Josephthal were controlled by Claimant's son, who was a registered representative at Blech and who had written power of attorney to direct the trading in Claimant's account at Josephthal. Respondents Corday and Josephthal further asserted that the Claimant was fully aware of the types of transactions which were occurring in her accounts, as evidenced by several letters written by Claimant expressing a desire to engage in more aggressive trading. Respondent Josephthal further asserted that Claimant had no losses in her accounts at Josephthal, and in fact had net profits in her accounts, and thus suffered no damages during the time her accounts were at Josephthal.

RELIEF REQUESTED

Claimant requested actual damages, including lost principal of approximately \$120,000, lost future potential investment income, and all commissions, fees and markups paid to respondents, pre-award and post-award interest, punitive damages, a trebling of the damages under federal and state RICO statutes, and all costs and expenses, including attorney's fees.

Respondent Corday specifically requested a decision finding that Schweitzer caused the losses in her account and is not entitled to damages in any amount.

Respondent Josephthal requested that all claims against it be dismissed and that Josephthal's fees and expenses in defending this case be awarded against Claimant.

Respondent Blech requested a dismissal of all claims.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel was informed that the Claimant dismissed, with prejudice, all claims against Respondents Brian Corday and Josephthal Lyon & Ross, Inc.

AWARD

After considering the pleadings, the Dismissal With Prejudice and the Consent Arbitration Award, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondent D. Blech & Company, Inc. is liable and shall pay to the Claimant the sum of \$100,000.00.

Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$1000.00 (one pre-hearing conference-panel x \$1000.00) are assessed as follows:

Claimant is assessed the fee of \$1000.00 less the \$1000.00 on deposit in full satisfaction thereof.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Josephthal shall pay to NASD Regulation, Inc. the \$500.00 past due member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent D. Blech & Co., Inc. has paid to NASD Regulation,

Inc. the \$500.00 member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

Chandler Bridges
Chandler Bridges, Esq.

Public

Sonia Fishkin
Sonia Fishkin, Esq.

Public

David S. Saylor
David S. Saylor

Industry

Date of Decision: 7/28/98