

NASD REGULATION AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Michael and Dianna Feldman

96-03168

Name of Respondents

J.B. Oxford & Company
James Allen Atkinson

REPRESENTATION

Claimants, Michael and Dianna Feldman (the "Claimants"), appeared pro se.

For Respondents, J.B. Oxford & Company ("Oxford") and James Allen Atkinson ("Atkinson"), (collectively the "Respondents") appeared Cynthia M. Schleindl, Esq. of the law firm Miller Milove & Cob located in San Diego, California.

CASE INFORMATION

Statement of Claim filed: August 14, 1996.

Claimant's Submission Agreement signed on: July 22, 1996.

Joint Statement of Answer filed by Respondents on: October 17, 1996.

Respondent Oxford's Submission Agreement signed on: October 17, 1996.

Respondent Atkinson's Submission Agreement signed on: October 23, 1997.

HEARING INFORMATION

Hearing dates/sessions: March 24, 1997 - 1 Session

The hearings were held at the offices of NASD Regulation, Inc., located in New York City, New York.

CASE SUMMARY

Claimants alleged that, in July of 1995, Atkinson, a registered representative of Oxford, a discount brokerage firm, convinced them to purchase 1,000 shares of Proxima Corp. ("Proxima"). Claimants further alleged that at the time they purchased Proxima it was at \$26 1/4 and Atkinson said it would quickly rise to \$35.00 per share. Claimants also alleged that when the stock started to decline Atkinson

told him to hold the stock and not to worry. Claimants asserted that price of Proxima continued to fluctuate and Atkinson refused to issue a stop payment order. Claimant further asserted that Atkinson failed to keep them informed of the changes in stock price and the stock declined to \$10.00 a share.

Respondents maintained that Oxford is a discount brokerage firm and that Claimants were wealthy and experienced investors who opened an account with it in June 1995. Respondents further maintained that Atkinson, a registered representative, recommended Claimants purchase 1,000 of Proxima at the prevailing market price. Respondents also maintained that, when the stock began to decline, Atkinson suggested that if Claimants were uncomfortable with the stock they should sell but the Claimants declined to take the loss. Respondents contended that Claimants attempted to enter a stop loss order and were informed that Oxford does not accept stop loss orders on issues not listed on a stock exchange. Respondents further contended that, in February 1996, the price of Proxima stock had risen to a point where the Claimants could have sold it for a profit but they continued to hold the stock. Respondents also contended that Claimants transferred their account to another brokerage firm where the stock continued to decline.

Respondents alleged that: Claimants damages are the result of market conditions and/or other factors beyond the control of the Respondents; Claimants failed to mitigate their losses; Claimants claims are barred by the doctrines of waiver, ratification and laches; Respondents had no duty to notify the Claimants of price changes in the market.

RELIEF REQUESTED

Claimants requested an award equal to the difference in the value of the stock from the time they purchased it at \$26 1/4 a share and the price they sold it at.

Respondents requested that: the Claimants' claims be dismissed and that they be reimbursed their costs and expenses and reasonable attorney's fees.

OTHER ISSUES CONSIDERED AND 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 the NASD.

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. Claimant's claims are dismissed in their entirety.
2. The panel found that Claimants still own Proxima. The position was transferred to Dean Witter Reynolds, Inc. on March 22, 1996. From January 23, 1996 through February 28, 1996, Proxima traded at prices at or around the price Claimants bought it. Claimants had the opportunity to liquidate the position during this period.

3. Respondents raised a Rule 10301 (d)(2) eligibility question for the first time at the hearing. There is a class action pending concerning Proxima and Claimants are members of the putative class; however, the pro se Claimants were not asked to make the election not to participate in the class action. The submission to arbitration shall not prejudice Claimants' right to participate in the class action.
4. All requests for attorney fees are denied.
5. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by the Claimants and have assessed the following forum fees:

1 Hearing Sessions x \$300 = \$300.00

ARBITRATOR'S SIGNATURE

I, James Dolan, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


James Dolan, Esq.
Public Chairperson

Date of Decision: June 10, 1997