

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

David Servais,

Claimant,

v.

No. 96-03940

Sovereign Equity Management
Corporation and Jeffrey Lefkowitz,

Respondents.

REPRESENTATION OF PARTIES

Claimant David Servais ("Claimant") was represented by R. Timothy Muth, Esq. and Anne Willis Reed, Esq. of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. located in Milwaukee, Wisconsin.

Respondent Sovereign Equity Management Corporation ("Sovereign Equity") did not appear at the hearing and was unrepresented. Respondent Sovereign Equity was previously represented by Stephanie A. Norman, Esq. of Wexler & Burkhart, P.C. located in Mitchel Field, New York.

Respondent Jeffrey Lefkowitz ("Lefkowitz") was represented by Chase A. Caro, Esq. of Caro & Associates, P.C. located in New York, New York. Respondent Lefkowitz was previously represented by Stephanie A. Norman, Esq. of Wexler & Burkhart, P.C. located in Mitchel Field, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 30, 1996.

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

Respondents' Joint Statement of Answer was filed on or about January 9, 1997.

Respondents did not file Submission Agreements.

Claimant's Post-Hearing Brief was filed on or about February 2, 1998. Respondent Lefkowitz's

Post-Hearing Brief was filed on or about February 4, 1998.

HEARING INFORMATION

The hearing was held on January 20, 1998 for two (2) sessions in Milwaukee, Wisconsin.

CASE SUMMARY

Claimant's claim involved an allegedly unauthorized trade in 20,000 shares of Diplomat stock by Respondents Lefkowitz and Sovereign Equity (collectively referred to as "Respondents") using funds from a newly created joint account which was allegedly set up without Claimant's knowledge or permission. Claimant maintained that immediately upon receiving written confirmation of the Diplomat stock purchase that he contacted Respondent Lefkowitz and asked him to cancel the trades. Claimant contended that the investment in Diplomat stock constituted an unsuitable investment which placed him in a high margin position. Claimant asserted that the Diplomat stock is presently nearly worthless.

Respondents generally denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that the Claimant has failed to state a claim upon which relief may be granted and that the arbitration is barred by the applicable statute of limitations. Respondents contended that the Statement of Claim is also barred under the doctrines of estoppel, waiver, and ratification. Respondents asserted that the Claimant authorized and directed the execution of all transactions in his account. Respondents maintained that Sovereign Equity exercised its supervisory responsibility in a proper manner and in accordance with industry standards.

RELIEF REQUESTED

Claimant requested an award of \$65,165, together with punitive damages in the amount \$65,165, interest, actual attorney fees in the amount of \$12,000, and such other relief as is just.

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

Claimant's Motion for Default Judgment against Respondent Sovereign Equity is hereby denied.

Respondents Sovereign Equity and Lefkowitz did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

Respondent Sovereign Equity did not appear at the hearing. Upon review of the file, the undersigned arbitrators have determined that Respondent Sovereign Equity has received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

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 the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) 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
- (3) 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 two (2) hearing sessions x \$750 = \$1,500 in forum fees. Total forum fees = \$1,500. 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 forum fees the hearing session deposit in the amount of \$750 (1/2 forum fees) previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondent Lefkowitz is liable for and shall pay forum fees in the amount of \$750 (1/2 forum fees).

Pursuant to §10333 of the Code, Respondent Sovereign Equity is liable for the member surcharge in the amount of \$350. Pursuant to §10319 of the Code, Respondent Sovereign Equity is liable for postponement fees in the amount of \$750.

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

Concurring Arbitrators' Signatures:

\s\ Herbert S. Bratt, Esq.
Herbert S. Bratt, Esq.
Chairperson
Public Arbitrator

February 12, 1998
Dated:

\s\ Emanuel V. Gumina, Esq.
Emanuel V. Gumina, Esq.
Panelist
Public Arbitrator

February 12, 1998
Dated:

\s\ James R. Carlson
James R. Carlson
Panelist
Industry Arbitrator

February 13, 1998
Dated:

For NASD Regulation use only:
Date award served on parties:

February 24, 1998