

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Lora and Brad Leonard

96-03979

Name of Respondents

Mark S. Garfinkel
Commonwealth Associates

REPRESENTATION

For Claimants: Stephen Murphy, Esq. of Pino & Dicks, Longwood, FL.

For Respondent Commonwealth Associates ("Commonwealth"): J.P. Wilson, Esq. of Commonwealth, New York, NY.

For Respondent Mark S. Garfinkel ("Garfinkel"): Harry L. Garman, Esq. of Harry L. Garman Counsellor at Law, New York, NY.

CASE INFORMATION

Statement of Claim filed by Lora and Brad Leonard ("Leonard") on: September 3, 1996.

Claimants' Submission Agreement signed on: May 20, 1996.

Joint Statement of Answer filed by Respondents Commonwealth and Garfinkel on: March 6, 1997.

Respondent Commonwealth's Submission Agreement signed on: October 16, 1996.

Respondent Garfinkel's Submission Agreement signed on: November 11, 1996.

HEARING INFORMATION

On April 10, 1997 a telephonic pre-hearing conference lasting one session was conducted with the arbitration panel.

On August 14, 1997 a telephonic pre-hearing conference lasting one session was conducted with the Chairperson.

On August 21 and 22, 1997 hearings lasting six (6) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimants alleged that Commonwealth and Garfinkel sold to the Claimants securities which were not suitable for the Claimants in light of their investment objectives and financial position; that Commonwealth and Garfinkel sold Claimants high risk speculative initial public offerings which were underwritten by Commonwealth; that Commonwealth also recommended that Claimants continue to hold in their portfolio a high risk international junk bond fund; that Commonwealth and Garfinkel advised Claimants to buy and hold these securities through the use of the maximum allowable margin loan; that this recommended strategy of investing in newly offered securities of small unproven companies and junk bonds while utilizing a margin loan was an extremely speculative investment strategy; that Claimants' investment objective was to grow their account to help pay for their children's college education and therefore, the extremely speculative investment strategies employed by Commonwealth and Garfinkel were not suitable for the Claimants; that Commonwealth and Garfinkel misrepresented the amount of risk involved in the investments they sold to Claimants as well as the risks of owning these securities on margin.

Respondents Commonwealth and Garfinkel generally and specifically denied each and every allegation and claim made by the Claimants and alleged that all investments made on behalf of Claimants were suitable and appropriate in light of their investment objectives, financial resources and investment experience and history; that they made no false and misleading statements to Claimants; that the brokerage accounts in question were properly supervised at all times; that all trades effected were authorized and approved prior to execution by Claimants; that Claimants controlled the accounts at all times; and, that Claimants were informed of all facts which were important to their investment decisions.

RELIEF REQUESTED

Claimants requested compensatory damages of \$110,000.00, plus attorney's fees, interest and costs and expenses incurred to arbitrate this proceeding.

Respondents requested an award in their favor, including without limitation dismissal of Claimants' Statement of Claim in its entirety, with prejudice; an award of their attorney's fees and other costs and expenses incurred to defend this arbitration proceeding, as well as such other relief as the arbitration panel deemed appropriate, just and proper. Respondent Garfinkel further requested that all references to this arbitration be expunged from his CRD record.

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.

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. Claimants' Statement of Claim is denied with prejudice.
2. Each party shall pay its own attorney fees and costs.

3. All references to this arbitration shall be expunged from Respondent Garfinkel's CRD record.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$5,550.00 (one pre-hearing conference with the entire panel x \$750.00 plus one pre-hearing conference with the Chairperson x \$300.00 plus six hearing sessions x \$750.00).

Claimants are hereby assessed \$5,550.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by the Claimants, leaving a balance due in the sum of \$4,800.00.

NASD Regulation, Inc. shall retain the \$350.00 member surcharge previously paid by Respondent Commonwealth.

Fees are payable to National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures

/S/

Public

James F. Turner, III
Chairperson

/S/

Public

Peter D. Cardillo

/S/

Industry

Dan G.S. Wright

10/31/97

Date of Decision: