

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Beverly Sidell-Fish

and

96-04118

Name of Respondents

Sutro & Co., and

Mark K. Lammers

REPRESENTATION OF PARTIES

Beverly Sidell-Fish ("Claimant") was represented by David Anson, Esq., of DeConcini, McDonald, Brammer, Yetwin & Lacy, Tucson, Arizona.

Sutro & Co., Incorporated ("Sutro") and Mark K. Lammers ("Lammers") (collectively referred to as "Respondents") were represented by Michael J. Meehan, Esq., of Meehan & Associates, Tucson, Arizona.

CASE INFORMATION

Claimant filed the Statement of Claim on or about September 9, 1996, and signed the Submission Agreement on August 28, 1996.

Respondents filed a Statement of Answer on or about November 18, 1996. Lammers Submission Agreement was signed on December 10, 1996. The Office of Dispute Resolution does not have a validly executed copy of Sutro's Submission Agreement on file.

HEARING INFORMATION

A telephonic pre-hearing conference was held on January 23, 1998 for one (1) session.

The Arbitration Panel held a hearing on November 19, 1997 for two (2) sessions and February 3, 1998 for two (2) sessions in Scottsdale, Arizona for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that the loss of over \$30,000 in her individual account at Sutro occurred because Lammers solicited the following trades: Unnecessary sales which triggered penalties or loads; related short term trading or appropriate municipal securities; buying speculative securities contrary to claimant's expressed desire to invest in conservative investments; unsuitable

concentration in high risk stock in general; unsuitable concentration in specific high risk issues such as Envirotech systems, Mikhon Gaming Corp., Artisoft, Inc., and Oro America; and the use of margin contrary to Claimant's circumstances and expressed investment objectives. Claimant also alleged that Respondents: Breached their contract with her; excessively leveraged her account; breached their fiduciary duty; failed to provide sound and reasonable investment advice; and violated Arizona Revised Statutes Section 44-1991, et seq., and Arizona Revised Statutes Section 44-1521, et seq. Claimant alleged that Sutro failed to supervise Lammers.

Unless admitted in their Answer, Respondents denied the allegations contained in the Statement of Claim. Respondents asserted that: Claimant adamantly rejected Lammer's suggestion for a more conservative investment approach, demanding aggressive growth investments due to her desire for above-average returns on her investments; Claimant ordered the purchase of all equity investments in a "margined" position; Claimant refused to heed any advice from Lammers on the speculative nature of margins; Claimant was well aware of the speculative nature of the securities she purchased in her individual investor account; and the municipal bond trades in Claimant's account were done at her insistence and contrary to advice given to claimant by Sutro and/or Lammers.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$40,000, plus costs and attorneys' fees.

Respondents requested that claimant's claim be denied, and that Respondents be awarded their reasonable attorneys' fees and costs incurred in this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

Sutro did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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:

Respondents Sutro & Co., Inc. And Mark K. Lammers are liable for and shall pay to Claimant Beverly Sidell-Fish the following: Compensatory damages in the amount of \$22,916.00; and attorneys' fees of \$6,111.00. The authority for the award of attorneys' fees can be found in A.R.S. §§ 12-341.01 (A) and 44-2002(A).

All other claims/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There was one (1) pre-hearing session x \$300 and there were four hearing sessions x \$400 = \$1,900 in forum fees. Pursuant to Rule 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 Rule 10332© of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to Rule 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$200 previously paid by Sutro.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$400 previously deposited by the Claimant.

Forum fees in the amount of \$1,500 are assessed by the arbitrators jointly and severally against Sutro and Lammers.

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

Dated:

Louis M. Parker
Louis M. Parker
Public Arbitrator, Presiding Chair

/s/

February 24, 1998

Oliver Ross
Oliver Ross
Public Arbitrator

/s/

March 5, 1998

Roy R. Petsch, II
Roy R. Petsch, II
Industry Arbitrator

/s/

February 27, 1998