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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Guennadi Razouvaev,

Claimant,

v.

Schroder, Wertheim & Co., Inc.,
State Street Capital Markets Corp., and
Raymond E. Koza.

Respondents,

and

No. 96-04398

State Street Capital Markets Corp.,

Cross-Claimant,

v.

Raymond E. Koza,

Cross-Respondent.

REPRESENTATION OF PARTIES

Claimant Guennadi Razouvaev ("Claimant") was represented by Michael H. DuBoff, Esq. of Davidoff & Malito, LLP located in New York, New York.

Respondent Schroder, Wertheim & Co. ("Schroder") was represented by Michael M. Gless, Esq. of Keesal, Young & Logan located in Long Beach, California.

Respondent State Street Capital Markets Corp. ("State Street") did not appear at the hearing. Respondent State Street was previously represented by Cirino M. Bruno, Esq. of Gusrae, Kaplan

& Bruno located in New York, New York.

Respondent Raymond E. Koza ("Koza") was represented by Joel S. Forman, Esq. of Bondy & Schloss located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 10, 1996.

The Amended Statement of Claim was filed on or about September 29, 1997.

Claimant's Submission Agreement was signed on September 30, 1996.

Respondent Schroder's Statement of Answer and Motion to Dismiss was filed on or about ~~September 12, 1996~~
December 12, 1996.

Respondent Schroder's Submission Agreement was signed on December 12, 1996. Respondent S. Schroder

Respondent State Street's Statement of Answer and Cross-Claim was filed on or about ~~September 16, 1996~~
December 16, 1996.

Respondent State Street did not file a properly executed Submission Agreement. Respondent S. State Street

Respondent Koza's Statement of Answer and Reply to Cross-Claim was filed on or about ~~September 9, 1996~~
December 9, 1996.

Respondent Koza's Submission Agreement was signed on December 3, 1996.

Respondent Schroder's Motion to Dismiss First Amended Claim was filed on or about September 24, 1997. Claimant's Response was filed on or about October 8, 1997. Respondent Schroder's Reply was filed on or about October 15, 1997.

HEARING INFORMATION

The telephonic hearings before the full panel were held on September 9, 1997 for one (1) session and October 21, 1997 for one (1) session.

The hearing was held on December 11, 1997 for two (2) sessions and December 12, 1997 for three (3) sessions.

The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondent Koza solicited Claimant to open a securities account at Respondent State Street. Claimant contended that he advised Respondent Koza that he had no previous experience in the trading of securities. Claimant asserted that Respondent Koza made unsuitable trades in Claimant's account in various securities including the purchase of 34,500 WTS U.S. Bridge of New York, Inc. ("U.S. Bridge") at a cost of \$214,600.00. Claimant maintained that Respondents failed to advise Claimant what warrants were or that U.S. Bridge was a highly risky security. Claimant alleged that after State Street disclosed that it had been supporting the price of U.S. Bridge, as well as Cable & Co. stock, the price of U.S. Bridge warrants dropped to \$.375 per warrant, resulting in a loss of almost 95% of Claimant's investment. Claimant contended that this loss was a direct result of the improper conduct and failure to advise Claimant of relevant information by all Respondents.

Respondent Schroder alleged that it merely acted as a clearing broker for State Street during the time Claimant's account was maintained at State Street. Respondent Schroder contended that, as a clearing broker, it did nothing more than perform ministerial "back office" duties such as processing trade confirmations and monthly account statements for State Street customer accounts, including Claimant's account. Respondent Schroder asserted that no one from Schroder ever spoke to Claimant, whether to offer him investment advice or for any other purpose.

Respondent State Street denied all liability to Claimant in its Statement of Answer. Respondent State Street alleged that Claimant authorized all transactions and received confirmations for all activity in his account. Respondent State Street contended that Claimant never complained in writing about his purchase in U.S. Bridge warrants, prior to commencing this arbitration. Respondent State Street asserted that any losses Claimant may have suffered were the result of market activity, and not any wrongdoing by State Street. In its Cross-Claim, State Street alleged that Cross-Respondent Koza's recommendations were inconsistent with internal State Street guidelines, and constituted a breach of his fiduciary duty to State Street.

Respondent Koza also denied all liability to Claimant and Cross-Claimant State Street in his Statement of Answer and Reply to Cross-Claim. Respondent Koza alleged that the Claimant is a very wealthy and sophisticated individual, who has misrepresented his net worth and income,

as well as his extensive experience in the stock market. Respondent Koza contended that the bulk of the U.S. Bridge warrants were unsolicited. Respondent Koza asserted that the U.S. Bridge warrants were clearly suitable for Claimant.

RELIEF REQUESTED

Claimant requested that the panel award: the \$214,600 purchase price of the U.S. Bridge warrants; rescission; interest; punitive damages; attorney fees; and any other relief as the arbitrators deem just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, along with an award of attorney fees and costs, together with such other and general relief as the panel deems just under the circumstances.

Cross-Claimant State Street requested that Koza indemnify State Street in the event State Street is found liable. Cross-Respondent Koza requested that the Cross-Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Schroder's Motion to Dismiss was granted prior to the hearing on the merits.

Claimant's request to the panel that it reconsider its ruling to dismiss Respondent Schroder was denied.

Respondent State Street 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 §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

Respondent State Street did not appear at the hearing. Upon review of the file, the undersigned arbitrators have determined that Respondent State Street 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent State Street Capital Markets Corp. is liable for and shall pay to Claimant Guennadi Razouvaev damages in the amount of One Hundred Fourteen Thousand Five Hundred Dollars and No Cents (\$114,500.00);
2. That Respondent Raymond E. Koza is liable for and shall pay to Claimant Guennadi Razouvaev damages in the amount of Fifty Seven Thousand Dollars and No Cents (\$57,000.00);
3. That the Cross-Claim against Raymond E. Koza is hereby dismissed in its entirety with prejudice;
4. That all claims against Respondent Schroder, Wertheim & Co., Inc. are hereby dismissed in their entirety with prejudice;
5. That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
6. 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 seven (7) hearing sessions before the full panel x \$750 = \$5,250 in forum fees. 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 associated with the filing of this claim in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondent State Street is liable for and shall pay forum fees in the amount of \$2,625 (1/2 total forum fees). Pursuant to §10332(c) of the Code, Respondent State Street is also liable for and shall pay the filing fee associated with its Cross-Claim in the amount of \$200. Pursuant to §10332(c) of the Code, Respondent Koza is liable for and shall pay forum fees in the amount of \$2,625 (1/2 total forum fees).

Pursuant to §10333 of the Code, Respondents State Street and Schroder are each liable for and shall pay the member surcharge in the amount of \$350.

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

Concurring Arbitrators' Signatures:

/s/ Stuart Sinai, Esq.
Stuart Sinai, Esq.
Chairperson
Public Arbitrator

December 16, 1997

Dated:

/s/ Levi T. Gardner, III
Levi T. Gardner, III
Panelist
Public Arbitrator

December 16, 1997

Dated:

/s/ Kenneth A. Madsen
Kenneth A. Madsen
Panelist
Industry Arbitrator

December 17, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: December 22, 1997