

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimants

Peter L. and Susan G. Lowenfeld

CASE No.

96-04705

Name of Respondents

Meyers Pollock Robbins, Inc.

Dennis R. Roth

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REPRESENTATION

Claimants Peter L. Lowenfeld, Jr. and Susan G. Lowenfeld ("Claimant"): John P. Connolly, Esq. of the Law Offices of John P. Connolly, Alexandria, VA.

Respondents Meyers Pollock Robbins, Inc. ("MPR") and Dennis R. Roth ("Roth"): Louis H. Miron, Esq., Attorney at Law, Westfield, NJ.

CASE INFORMATION

Statement of Claim filed by Peter Lowenfeld, Jr. and Susan Lowenfeld ("Claimants"): October 21, 1996.

Peter Lowenfeld, Jr.'s Submission Agreement signed on: October 18, 1996.

Susan Lowenfeld's Submission Agreement signed on: October 21, 1996.

Statement of Answer filed by Respondents MPR and Roth ("Respondents"): December 5, 1996.

Respondent MPR's Submission Agreement signed on: December 19, 1996.

Respondent Roth's Submission Agreement signed on: December 12, 1996.

HEARING INFORMATION

Hearing Date/Sessions: May 28, 1997 - two sessions

Hearing Location: NASD, Inc.  
Washington, D.C.

CASE SUMMARY

Claimants alleged, among other things, that Respondents effectuated an unauthorized trade in Claimants' brokerage account at MPR and caused Claimant to incur damages as a result of the liquidation of stock in Claimants' account to cover the alleged unauthorized purchase of stock. Specifically, Claimants claimed that Respondents :

- (a) acted in violation of Sec. 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5;
- (b) acted in violation of Sec. 11-703 of the Code of Maryland;
- (c) acted in violation of the NASD Rules of Fair Practice;
- (d) breached a contractual duty to Claimants; and
- (e) engaged in fraud and deceit.

Respondents moved to dismiss. MPR and Roth categorically denied all of Claimants' allegations of wrongdoing, arguing that they acted in good faith as they alleged that Claimants authorized and directed Respondents to execute all of the trades in Claimants' MPR account. As affirmative defenses, MPR and Roth stated that Claimants are barred by the doctrines of waiver and estoppel. Respondents maintained that Claimants assumed the risk of loss and are barred by contributory/comparative negligence. Respondents also maintained that Claimants failed to follow advice from Respondents to liquidate some stock from Claimants' account to avoid and mitigate their losses from margin calls. MPR and Roth maintained that Claimants' claim is barred by the statute of limitations, and the fact that Claimants' alleged losses were caused by third parties and a world economic market over which they did not exercise control.

#### **RELIEF REQUESTED**

Claimants requested, in their Statement of Claim, compensatory damages in the amount of \$60,000, with interest, attorneys' fees and exemplary damages in the amount of \$90,000.

Respondents requested, in their Answer, that an award be entered in favor of Respondents with respect to each allegation in the Claim, in addition to attorney's fees, costs and disbursements relating to the arbitration.

#### **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 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. That Respondents Meyers Pollock Robbins, Inc. and Dennis R. Roth are jointly and severally liable to Claimants Peter L. and Susan G. Lowenfeld and shall pay to the Claimants the sum of \$20,000; no pre judgement interest is awarded on this amount.
2. That Claimants' claim for punitive damages is denied in its entirety.
3. That all parties shall bear their own costs, including attorneys' fees except as forum fees are addressed below.

4. Any and all claims for relief not specifically addressed herein are denied in their entirety.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Claimants paid a non refundable filing fee of \$200  
Claimants deposited a hearing session fee of \$750

MPR paid a surcharge fee of \$350

2 hearing session x \$750 = \$1,500

Forum Fees Assessed Against: Claimants to pay 1/3 and Respondents to pay 2/3

Claimants are assessed forum fees in the amount of \$500; however, Claimants are entitled to offset this amount with their hearing session deposited of \$750 so that the NASD Regulation is to refund to the Claimants the sum of \$250. Respondents MPR and Roth are jointly and severally assessed forum fees in the amount of \$1,000.

Fees are payable to the NASD Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

6/24/97

Bruce Sanders  
Bruce Sanders, Esq. - Chairperson  
Public Arbitrator

6/24/97

Elaine A. Sehart-Green  
Elaine A. Sehart-Green, Esq. - Panelist  
Public Arbitrator

6/24/97

Pierre J. Dolan  
Pierre J. Dolan - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation: June 26, 1997