

11/19/97 9711101

AWARD
NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Laura Nell Mitchell,

Claimant,
and

No. 96-05256

Merrill Lynch Pierce Fenner & Smith, Inc.,
J. Michael Sealy and Joanne G. Sealy,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Laura Nell Mitchell, was represented by Zebelin G. Pearson, Esquire of Dallas, Texas.

Respondents, J. Michael Sealy and Joanne G. Sealy appeared pro se in these proceedings.

CASE INFORMATION

Claimant, Laura Nell Mitchell's Statement of Claim was filed on or about December 18, 1996.

Claimant, Laura Nell Mitchell's Submission Agreement was signed on November 18, 1996.

Respondents, J. Michael Sealy and Joanne G. Sealy's Statement of Answer was filed on or about February 19, 1997 and their Submission Agreement was signed on February 5, 1997.

HEARING INFORMATION

The hearing was held for two (2) sessions September 16, 1997 and for two (2) sessions on September 17, 1997 for a total of four (4) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Laura Nell Mitchell, ("Claimant") asserted that she suffered losses due to the actions of Respondents, J. Michael Sealy and his wife, Joanne G. Sealy, ("Respondents"). She alleged that after the death of her husband, Mr. James Royce Mitchell, the majority stockholder of Southwest Blueprint Company, Mr. Sealy approached Claimant and sought to provide investment advise to her based on

a prior relationship as her late husband's investment advisor. Therefore, Claimant asserted that as an inexperienced business woman and investor, she allowed Mr. Sealy and later Mrs. Sealy, to assist her in virtually all of her financial affairs. Claimant further alleged that the Sealys also sought to advise her on personal matters. As such, Claimant alleged that the Respondents, Mr. and Mrs. Sealy, profited unfairly from their fiduciary relationship with her. She alleged that in January, 1992, while her account was open with Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and while Mr. Sealy was her broker there, he and his wife induced her to purchase 220,000 shares of Sealy Lawngard, Inc. ("Lawngard") stock for \$88,000.00, and in March of 1993 to purchase another \$10,000.00 of that same stock. Mr. Sealy and Mrs. Sealy were, Claimant asserted, at all relevant times to these proceedings, the officers, directors, shareholders and controlling persons of Sealy Lawngard, Inc. Despite knowing her express conservative investment goals, Claimant asserted that by inducing her to invest in such a speculative venture as Lawngard, Mr. and Mrs. Sealy acted with the specific intent to defraud her.

Claimant alleged that the Respondents intent to defraud her was evident based upon characteristics of the Lawngard purchases, which specifically were that: Claimant was posting \$88,000.00 of capital for Sealy Lawngard, Inc., while only receiving 22% of the stock for the company, while Respondents, Mr. and Mrs. Sealy posted almost no capital for the company, yet controlled 75% of the company's stock; there was no existing market for the product that Lawngard was going to manufacture, nor for the company's stock; Claimant was not aware that her investment in Lawngard was not liquid; and contained restrictions on the resale of the stock; and finally, prior to the second investment into Lawngard, in March of 1993, Respondents did not make Claimant aware of a \$17,511.00 loan that the Lawngard company had made to shareholders. Claimant maintained that due to the nature of their relationship to the Claimant, Respondents, J. Michael Sealy and Joanne G. Sealy should reimburse her for the total amount of her investment in Lawngard due to its inherent lack of value.

J. Michael Sealy and Joanne G. Sealy denied any wrongdoing on their part. Instead, the Respondents alleged that the Claimant often made informed business decisions, for example, they alluded to the fact that she either accepted or rejected the Respondents' advice on a variety of matters, on the fact that she served on the Boards of several local social groups, and that she had the savvy to travel internationally. With this degree of business knowledge, Respondents asserted that the Claimant not only knew of the speculative nature of the Lawngard company, but made an informed decision to invest in Lawngard. Therefore, Respondents averred that despite their relationship with the Claimant, the Claimant should not be reimbursed for her decision to invest in a speculative company.

RELIEF REQUESTED

Claimant, Laura Nell Mitchell, requested an award for: \$98,000.00 in actual damages in pleadings modified at hearing to \$53,000 in actual damages, and \$100,000.00 in punitive damages against

Respondents, J. Michael Sealy and Joanne G. Sealy, in addition to interest of that amount and the attorney's fees and costs related to the arbitration of this case.

Respondents, J. Michael Sealy and Joanne G. Sealy, requested that the claims asserted against them be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant, Laura Nell Mitchell's claim against Respondent, Merrill Lynch Pierce Fenner & Smith was withdrawn in these proceedings prior to the hearing of the matter.

Upon review of the file and the representations made by/on behalf of Claimant, Laura Nell Mitchell, the undersigned arbitrators have determined that Respondents, J. Michael Sealy and Joanne G. Sealy, have been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents, J. Michael Sealy and Joanne G. Sealy, had received due notice of the hearing as required under § 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 originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent J. Michael Sealy is liable for and shall pay Claimant Laura Nell Mitchell \$53,000 in actual damages plus interest at the rate of 8% per annum from the date of this award until this award shall have been paid in full;
2. Respondent J. Michael Sealy is liable for and shall pay Claimant Laura Nell Mitchell \$10,000 in attorneys fees based upon pleadings submitted by the parties plus interest at the rate of 8% per annum from the date of this award until this award shall have been paid in full;
3. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were four (4) hearing sessions x \$750.00 = \$3000.00 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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© of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee of \$200.00 and shall **retain** as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Laura Nell Mitchell.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge of \$350.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Merrill Lynch Pierce Fenner & Smith.

All remaining forum fees are assessed against the Respondent J. Michael Sealy as follows. That J. Michael Sealy is liable for and shall reimburse Claimant Laura Nell Mitchell her hearing session deposit in the amount of \$750.00. Respondent J. Michael Sealy is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$2,250.00 (=total forum fees of \$3000.00 less hearing session deposit of \$750.00 previously paid by Claimant.)

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

Concurring Arbitrators' Signatures

/s/ Joan Stearns-Johnsen

November 19, 1997

Joan Stearns-Johnsen, Esq.

Dated:

Chairperson

Public Arbitrator

/s/ Joe S. Shepherd

November 22, 1997

Joe S. Shepherd

Dated:

Panelist

Public Arbitrator

/s/ Carol A. Freedland

November 28, 1997

Carol A. Freedland

Dated:

Panelist

Industry Arbitrator

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