

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ralph and Eleanor Krassow

NASD CASE NO. 96-05297

Name of Respondents

JW Charles Securities, Inc.
and Paul Allmann

REPRESENTATION

For Claimants: Jerome A. Pivnik, Esq. of Pivnik & Nitsche, P.A., Miami, Florida.

For Respondents JW Charles Securities, Inc. ("JW Charles") and Paul Allmann ("Allmann"): Gregory Tendrich, Esq., Assistant General Counsel of JW Charles Securities, Inc.

CASE INFORMATION

Statement of Claim filed on November 26, 1996.

Claimants' Submission Agreement signed on November 21, 1996.

Statement of Answer filed by Respondents on February 18, 1997.

Respondent JW Charles' Submission Agreement signed on February 28, 1997 by Gregory Tendrich, Assistant General Counsel of JW Charles Securities, Inc. Respondent Allmann's Submission Agreement signed on April 4, 1997.

HEARING INFORMATION

On June 27, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the arbitration panel. On October 16, 1997, in Fort Lauderdale, Florida, hearings lasting two (2) sessions were conducted.

CASE SUMMARY

Claimants alleged causes of action for rescission under Florida Statute, Section 517.211 and negligence against JW Charles and its account executive, Allmann, for his unauthorized sale of the Claimants' Intel warrants. Claimants alleged that they opened an account with JW Charles on August 11, 1995 and thereafter, on January 18, 1996, Allmann solicited Claimants to invest in 300 Intel warrants at \$22 1/8 per warrant. Claimants asserted that this was an investment Mr. Krassow, a retired New York police

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officer, did not understand and that he agreed to the recommendation in reliance upon the advice of Allmann. Claimants asserted that the confirmation of the trade erroneously or fraudulently indicated that the buy order was "unsolicited", which was not the case. Claimants further alleged that on April 16, 1996, Allmann, without authorization from either of the Claimants and acting in the course and scope of his employment with JW Charles, sold their Intel warrants. Claimants alleged that the next day, Mr. Krassow called Allmann and demanded the sale be rescinded and that the Intel warrants be restored to his account, but Allmann refused. Claimants alleged that on or about April 19, 1996, Mrs. Krassow went to Allmann's supervisor, Howard Shapiro, and complained about Allmann's unauthorized trade, but that Mr. Shapiro tried to dissuade Mrs. Krassow from taking any action and told her that Allmann could lose his job if she complained. Claimants alleged that on April 20, 1996, Allmann called the Krassows and told them that he could be fired and would lose his license if they made a complaint, after which Claimants advised him they would be willing to absorb half the cost of the increase in the warrants, \$800.00 at that time, but still Allmann refused. Claimants asserted that the unauthorized sale of the Intel warrants was at \$29 and that said warrants greatly appreciated since that time, having last traded at \$83 3/8 as of the date this claim was filed, resulting in lost profits. Claimants further asserted that Respondents attempted to fraudulently conceal the Claimants' right to rescission.

Respondents asserted that Claimants' allegation of an unauthorized transaction by Allmann is without merit and alleged that Allmann had specific verbal authorization to sell 300 Intel warrants at a price between \$28-\$29. Respondents asserted that Allmann received these instructions on several occasions and acted upon these instructions when he sold the Intel warrants at \$29 per warrant on April 16, 1996. Respondents asserted that the fact that the Claimants continued to trade with Allmann after the alleged unauthorized trade; the fact that the Claimants' original complaint alleged only Allmann's failure to obtain authorization from both Mr. and Mrs. Krassow; and Allmann's unblemished record in the industry, all support their position that the trade was authorized.

RELIEF REQUESTED

Claimants requested an award against Respondents, jointly and severally, for damages of \$18,375.00 in lost profits and \$150.00 in commissions, together with interest from the date of the alleged unauthorized sale, attorneys' fees and costs.

Respondents requested that the Claimants' claims be denied in their entirety and that the Panel award Respondents their attorneys' fees and costs incurred in defending this matter.

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.

The parties have stipulated that the Arbitrators have the authority to award attorneys' fees and have further agreed to submit the issues of entitlement to and amount, if any, of attorneys' fees to the Panel for determination.

AWARD

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

1. Respondents are found liable, jointly and severally, and shall pay compensatory damages to Claimants in the amount of \$10,000.00, pre-judgment interest specifically excluded.
2. All other claims for relief, including the parties' requests for attorneys' fees and costs, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,200.00 (two sessions X \$400.00 per session, plus one pre-hearing conference with the Panel X \$400.00) as follows:

1. Claimants are hereby assessed the sum of \$600.00, for which NASD Regulation, Inc. shall retain the amount of \$600.00 from the hearing session deposits previously paid by Claimants in full satisfaction thereof.
2. Respondents are hereby assessed, jointly and severally, the sum of \$600.00, for which NASD Regulation, Inc. shall retain the amount of \$600.00 from the hearing session deposit previously paid by Respondents in full satisfaction thereof.
3. NASD Regulation, Inc. shall retain the \$100.00 non-refundable claim filing fee previously paid by Claimants and the \$200.00 member surcharge previously paid by JW Charles.

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

Concurring Arbitrators' Signatures

Public/Industry

_____/s/
Randy L. Rubin, Esq.
Chairperson

Public

_____/s/
Shirley A. Levitt

Public

Dissenting Arbitrator's Signature

_____/s/
Gene Apruzzi

Industry

Date of Decision: December 2, 1997