

9/12/97

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Estate of Sidney Gelman, Deceased
By Elaine R. Gelman, Personal Representative,

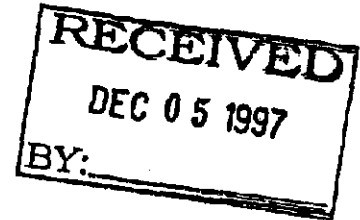
Claimant,

v.

Case Number 96-05802

*State Street Capital Markets Corp.,
Radcliff St. Aubyn Bent,
Schroder Wertheim & Co., Inc.,

Respondents.



REPRESENTATION OF PARTIES

Claimant Estate of Sidney Gelman, Deceased By Elaine R. Gelman, Personal Representative ("Claimant") was represented by Anthony V. Trogan, Esq. of Weisman, Trogan, Young & Schloss, P.C. located in Bingham Farms, Michigan.

Respondent State Street Capital Markets Corp. ("State Street") was unrepresented 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 Radcliff St. Aubyn Bent ("Bent") was represented by Charles J. Hecht, Esq. of Hecht & Steckman, P.C. located in New York, New York. Respondent Bent was previously represented by Ross B. Intelisano, Esq. of Pressman & Associates located in New York, New York. Respondent Bent was also previously represented by Cirino M. Bruno, Esq. of Gusrae, Kaplan & Bruno located in New York, New York.

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

CASE INFORMATION

The Statement of Claim was filed on or about December 21, 1996.

Claimant's Submission Agreement was signed on December 16, 1996 by Elaine R. Gelman, Personal Representative.

The Statement of Answer and Motion to Dismiss of Respondents State Street and Bent was filed on or about February 26, 1997.

Respondent Bent's Submission Agreement was signed on February 26, 1997.

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

The Amended Statement of Answer of Respondent Bent was filed on February 28, 1997.

The Motion to Dismiss and Answer of Respondent Schroder Wertheim was filed on or about March 3, 1997.

Respondent Schroder Wertheim's Submission Agreement was signed on February 25, 1997 by Dennis C. Cronin, Director of Law and Compliance of Schroder Wertheim & Co.

Respondent Schroder Wertheim's Supplemental Brief in Support of its Motion to Dismiss and Claimant's Additional Submission in Opposition to the Motion to Dismiss were filed on or about October 17, 1997.

HEARING INFORMATION

The telephonic pre-hearing conference was held on October 27, 1997 for one (1) session.

The telephonic hearing before the full panel was held on October 15, 1997 for one (1) session.
The hearing was held on November 4, 1997 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Sidney Gelman opened an account with Respondents by the transfer of \$142,537 in securities and cash from another account. Claimant contended that immediately upon transfer of assets to the account, Respondents began a course of trading in the account characterized by wild speculative trading in penny shares and warrants in penny shares so obscure that pricing on these securities could only be obtained through great effort and difficulty. Claimant asserted that the trading in the account was further characterized by "in and out" trading in the same securities for no apparent purpose or reason. Claimant maintained that subsequent to Sidney Gelman's death on June 28, 1996, nine separate transactions occurred in the account having a value in excess of \$250,000. Claimant alleged that all of these transactions were unauthorized. Claimant asserted that the transactions were made both in stocks which were already held in the account and in stocks which had not been previously held in the account. Claimants maintained that all of the transactions in the account were made without adequate risk disclosure. Claimant alleged that the transactions in the account were unsuitable for Sidney Gelman who was, at the time, 82 years old, and in frail health as evidenced by his death during the month of June, 1996. Claimant contended that, as a result of Respondents wrongful conduct, Claimant's entire \$142,537 investment was lost.

Respondent State Street denied all liability to Claimant in its Statement of Answer and Motion to Dismiss. Respondent State Street alleged that Claimant granted Respondent Bent oral authorization to make trades in his account. Respondent State Street contended that, in the normal course of doing business, Respondent Bent would make a trade for Claimant, then call him at some time subsequent to the trades to confirm and discuss the transaction. Respondent State Street asserted that the Claimant ratified all transactions and received conformations for all activities in his account. Respondent State Street alleged that any losses Claimant may have suffered were the result of market activity, and not any wrongdoing by Respondents.

Respondent Bent also denied all liability to Claimant in his Statement of Answer. Respondent Bent contended that Claimant failed to state a claim upon which relief may be granted. Respondent Bent asserted that Claimant is estopped from asserting his claim for damages for the purchases of securities. Respondent Bent maintained that Claimant's claims are barred by the doctrines of waiver, laches and ratification.

Respondent Schroder Wertheim denied all liability to Claimant in its Statement of Answer and Motion to Dismiss. Respondent Schroder Wertheim alleged that it merely acted as the clearing broker for State Street during the time that Claimant's account was maintained at State Street. Respondent Schroder Wertheim 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's customers, including Claimant's account. Respondent

Schroder Wertheim asserted that no one from Schroder Wertheim ever spoke to Claimant, whether to offer investment advice or for any other purpose.

RELIEF REQUESTED

Claimant requested an award consisting of: \$142,537 as out-of-pocket loss; interest at 12%; costs; attorney fees; exemplary and punitive damages; additional damages; and rescission of all transactions and payment of all monies necessary to make Claimant whole.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, along with costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent State Street did not appear at the hearing. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent State Street had received due notice of the hearing as required under §10315 of the NASD Code of Arbitration Procedure (the "Code") and that arbitration of the matter would proceed pursuant to §10318 of the Code.

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 Code and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

Respondent Schroder Wertheim's Motion to Dismiss was denied without prejudice prior to hearing and granted in this final award.

The parties who appeared at the hearing 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:

- (1) That Respondents State Street Capital Markets Corp. and Radcliff St. Aubyn Bent are jointly and severally liable for and shall pay to the Claimant Estate of Sidney Gelman, Deceased By Elaine R. Gelman, Personal Representative the sum of Thirty Two Thousand Dollars and No Cents (\$32,000.00), which sum is inclusive of an award of attorney fees;
- (2) Respondent Schroder Wertheim & Co., Inc.'s Motion to Dismiss was granted at the close of Claimant's case. Accordingly, Claimant's claims against Respondent Schroder Wertheim & Co. are hereby dismissed in their entirety with prejudice; and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated and addressed are hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each hearing session before a single arbitrator. There was one (1) pre-hearing sessions before a single arbitrator \times \$300 = \$300 in forum fees. There were three (3) hearing sessions before the full panel \times \$750 = \$2,250 in forum fees. Total forum fees = \$2,550. 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 in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10332(c) of the Code, Respondents State Street Capital Markets and Radcliff St. Aubyn Bent are jointly and severally liable for and shall pay all forum fees forum fees incurred in this matter which is the amount of \$2,550.

Pursuant to §10332(c) and §10333 of the Code, Respondent State Street Capital Markets is also 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/ Marc E. Thomas, Esq.

Marc E. Thomas, Esq.

Chairperson

Public Arbitrator

November 26, 1997

Dated:

/s/ Barbara A. Johannessen, Esq.

Barbara A. Johannessen, Esq.

Panelist

Public Arbitrator

November 26, 1997

Dated:

/s/ Terry W. Maynard

Terry W. Maynard

Panelist

Industry Arbitrator

November 26, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: December 1, 1997