

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Robin Lynn Maratta, and
Brian Keith Sembieda

and

97-00093

Name of Respondents

William C. Scott,
Pamela Scott, and
Fox & Company Investments Inc.

REPRESENTATION OF PARTIES

Robin Lynn Maratta, and Brian Keith Sembieda ("Claimants") were represented by Morris A. Kaplan, Esq., and Mark Meltzer, Esq., of Goldman & Kaplan, LTD., Phoenix, Arizona.

William C. Scott, Pamela Scott, and Fox & Company Investments Inc. (Jointly referred to as "Respondents") were represented by Wade R. Causey, Esq., of Renaud, Cook & Drury, P.A., Phoenix, Arizona.

CASE INFORMATION

Claimants filed their Statement of Claim on or about January 3, 1997, and signed their Submission Agreement of Claimant on January 2, 1997.

Respondents filed their Statement of Answer on or about April 18, 1997, and signed their Submission Agreement on April 18, 1997.

HEARING INFORMATION

The Arbitration Panel held a hearing on November 20, and 21, 1997 for two (2) sessions each day, and December 2, 1997 for two (2) sessions in Scottsdale, Arizona for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondents: Sold unsuitable securities to Claimants; committed churning and excessive trading in Claimants' customer accounts; made unauthorized transactions

to Claimants' accounts; and breached the implied covenant of good faith and fair dealing. Claimants also alleged that William C. Scott ("Scott"); handled Claimants' accounts fraudulently while he was employed by and under the supervision of Fox & Company Investments Inc. ("Fox"); and was negligent in the handling of the accounts. Claimant further alleged that Fox failed to properly supervise Scott. The allegations arose out of transactions in securities more fully presented at the hearing in this matter.

Unless specifically admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following defenses: Scott never misrepresented nor omitted to state any material fact pertaining to the handling of Claimants' accounts; Respondents disclosed all risk associated with the investments made during Respondents' handling of the accounts; Claimants made specific decisions in rejecting and accepting investments; Claimants' losses are minimal, if any, and are due solely to the decisions made by Claimants; the conduct of Scott in handling the accounts was well within any applicable standard of care; there is *no evidence that Scott acted improperly in any manner, nor is there any indication that Fox ever received any kind of complaints or information indicating that Scott in any way was acting improperly with respect to the handling of Claimants' accounts; Claimants were fully aware of their accounts, the types of accounts, including the margin account, and all transactions in the accounts; and a substantial portion of the commissions charged for the trading were discounted by the broker and were unsolicited discounts afforded to Claimants by Fox.*

RELIEF REQUESTED

Claimant requested an award of losses, commissions, a reasonable return of their funds, prejudgment interest at the statutory rate of 10%, punitive damages, attorneys' fees and costs.

Respondents requested that the arbitrators enter an award in their favor and against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Claimant's claims against Pamela Scott were dismissed.

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 at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondents William C. Scott, and Fox & Company Investments Inc. Are jointly and severally liable for, and shall pay to Claimant Robin L. Maratta the following: \$57,750 for compensatory damages; interest at the rate of 5.25 % per annum from October 1, 1996 until paid; and reasonable attorney's fees upon application. The authority for the award of attorney's fees can be found in the contract between the parties.

All other claims/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were six (6) hearing sessions @ \$600 = \$3,600 in forum fees. Pursuant to Rule 10332(b) of the 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 Rule 10332© of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to Rule 10333 of the Code, Fox & Company Investments Inc., is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution a non-refundable member surcharge in the amount of \$350.

Additional forum fees in the amount of \$ 1,200 (1,800 - 600) are assessed by the arbitrators against the Claimants.

Additional forum fees in the amount of \$1,800 are assessed by the arbitrators jointly and severally against William C. Scott, and Fox & Company Investments Inc.

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

Dated:

Gregory W. Dawson
Gregory W. Dawson
Public Arbitrator, Presiding Chair

/s/

January 15, 1998

Carrie P. Withey
Carrie P. Withey
Public Arbitrator

/s/

January 28, 1998

Seth M. Schindler
Seth M. Schindler
Industry Arbitrator

/s/

January 16, 1998