

AWARD

NASD REGULATION, INC. OFFICE OF DISPUTE RESOLUTION

In the Matter of Arbitration Between

Mendl Siegel

Claimant,

and

No. 97-00104

Euro-Atlantic Securities, Inc., Neil Brauner,

John Lembo and David Melillo

Respondents.

REPRESENTATION OF PARTIES

For Claimant: Mendl Siegel, was represented by Leigh R. Lasky, Esq., of Beigel Lasky Rifkind Fertik Gelber & White located in New York, New York.

For Respondents: Euro-Atlantic Securities, Inc. ("Euro-Atlantic") and David Melillo ("Melillo") did not appear at hearing. Neil Brauner ("Brauner") and John Lembo ("Lembo") were represented by Michael H. Ference, Esq. of Lampert & Lampert, of New York, New York, but did not appear at hearing.

CASE INFORMATION

Claimant's Statement of Claim was filed on: January 9, 1997.

Claimant's Submission Agreement was signed on January 2, 1997.

Respondents' Statement of Answer was filed on: March 18, 1997.

Respondents Euro-Atlantic, Lembo, and Melillo's Submission Agreements were signed on: March 4, 1997.

Respondent Brauner's Submission Agreement was signed on February 28, 1997.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/ Sessions: August 13, 1997 for One (1) Session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Siegel alleged that Respondents Brauner, Lembo and Melillo, while employed by or acting as an agent for Respondent Euro-Atlantic, failed to timely sell stocks and to transfer the proceeds of such sales to his bank account, leading to certain measurable damages. When this occurred, Siegel's account originally held 27,100 shares of Hollywood Productions Inc., ("FILM"), valued at \$10 per share; 62,300 shares of Multimedia Concepts Intl, Inc., ("MMCI"), valued at \$5 per share; 10,000 warrants on FILM ("FILMW"), valued at \$5.75 per warrant; and cash in the amount of \$100,124. Claimant alleged that on October 1, 1996, he first faxed his request to sell the stocks, and after numerous faxes and phone calls, at the end of October, Claimant's account still held 18,100 shares of FILM valued at 7 1/4 per share, and all of the MMCI stocks with a value of 2 1/4 per share. Based upon the above allegations, Siegel asserted claims for fraud; breach of fiduciary duty; breach of contract; negligence; unfair trade practices; and breach of duty of good faith and fair dealing

Respondents denied the material allegations set forth in the Statement of Claim. Respondents stated that Brauner was the registered representative of Siegel's account, but that Melillo was President of Euro-Atlantic and not Brauner's NASD Series 24 General Securities Principal, nor Brauner's supervisor. Respondent Lembo denied that he was assigned to liquidate Claimant's account by Euro, and claimed that he did speak with Claimant, but only as a result of a prior relationship the two had from another brokerage firm. Respondents asserted the following affirmative defenses: failure to state a claim upon which relief may be granted; failure to timely object to the transactions in question; the losses asserted were the result of market losses; Claimant's own conduct contributed to the losses he alleged were the result of Respondents' conduct; the damages sought were speculative, remote and unsupported by evidence; the Doctrine of Laches; and Claimant assumed the risk of investing in the securities market.

RELIEF REQUESTED

Claimant Mendl Siegel requested an award for \$100,000.00 for actual damages; \$300,000.00 in punitive damages; interest; attorneys' fees and costs. At hearing, the Claimant amended his relief request to actual damages of \$239,812.50 in actual damages.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of Claimant, the undersigned

arbitrators have determined that Respondents were properly served with the Statement of Claim pursuant to §10314 of the NASD Code of Arbitration Procedure (the "Code"). In addition, the arbitrators have determined that Respondents Euro-Atlantic Securities, Inc., Neil Brauner, John Lembo, and David Melillo received due notice of the hearing as required under §10318 of the Code.

At hearing, Claimant stated that settlement had been reached with Respondents Brauner and Lembo. Based upon this representation, the claim continued against Respondents Euro-Atlantic and Melillo.

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. Respondents Euro-Atlantic Securities, Inc. and David Melillo are jointly and severally liable and shall pay to Claimant Mendl Siegel the sum of \$13,000.00 as actual damages, representing actual damages found by the panel of \$23,000.00 minus the settlement sum paid by other Respondents;
2. The claims for punitive damages are dismissed;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was One (1) hearing session x \$750.00 per hearing session = \$750.00 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 arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) 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, Mendl Siegel.

Pursuant to §10333 of the Code, Euro-Atlantic Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$350.00.

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

Concurring Arbitrators' Signatures

/s/ Stephen James Nagy, Esq.
Stephen James Nagy, Esq.
Chairperson
Public Arbitrator

August 25, 1997
Dated:

/s/ Phillip J. Glick, Esq.
Phillip J. Glick, Esq.
Public Arbitrator

September 2, 1997
Dated:

/s/ Mark C. Hutchinson
Mark C. Hutchinson
Industry Arbitrator

September 3, 1997
Dated:

For NASD use only:

Date Award was served on the parties: September 8, 1997