

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Ingram Liljestrand, and
Rebecca Liljestrand,

Claimants,

v.

No. 97-00165

Investors Associates, Inc., Matthew
Proman, Randy Narod, David
Reynolds, and Meyers Pollock Robbins, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimants Ingram Liljestrand and Rebecca Liljestrand (collectively referred to as "Claimants") were represented by Jerry H. Freidland, Esq. of Milwaukee, Wisconsin.

Respondent Investors Associates, Inc. ("Investors Associates") was represented by Lawrence R. Gerber, Esq. of New York, New York.

Respondent Matthew Proman ("Proman") appeared pro se. Respondent Proman was previously represented by Corey S. Marell, Esq. and Bill T. Singer, Esq. of Singer Zamansky LLP located in New York, New York.

Respondent Randy Narod ("Narod") appeared pro se. Respondent Narod was previously represented by Corey S. Marell, Esq. and Bill T. Singer, Esq. of Singer Zamansky LLP located in New York, New York.

Respondent David Reynolds ("Reynolds") appeared pro se. Respondent Reynolds was previously represented by Lawrence R. Gerber, Esq. of New York, New York.

Respondent Meyers Pollock Robbins, Inc. ("MPR") appeared pro se. MPR was previously represented by Louis H. Miron, Esq. of Westfield, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about January 14, 1997.

Claimants' Submission Agreement was signed on January 8, 1997.

The Joint Statement of Answer of Respondents Investors Associates and Reynolds was filed on or about April 3, 1997.

The Submission Agreement of Respondent Investors Associates was signed on April 3, 1997.

Respondent Reynolds did not file a signed Submission Agreement.

The Statement of Answer of Proman was filed on or about April 15, 1997.

Respondent Proman's Submission Agreement was signed on April 15, 1997.

The Statement of Answer of Respondent Narod was filed on or about April 15, 1997.

Respondent Narod's Submission Agreement was signed on April 15, 1997.

The Statement of Answer of Respondent MPR was filed on or about April 30, 1997.

The Submission Agreement of Respondent MPR was signed on April 9, 1997.

Claimants' Amended Statement of Claim was filed on or about December 1, 1997.

Respondent Investors Associates' Amended Statement of Answer was filed on or about December 30, 1997.

Respondent MPR's Amended Statement of Answer was filed on or about January 2, 1998.

Claimants' Post-Hearing Brief was filed on or about August 7, 1998.

HEARING INFORMATION

The telephonic pre-hearing conference before the full panel was held on June 16, 1998 for one (1) session.

The hearing was held on July 29, 1998 for one (1) session in Milwaukee, Wisconsin.

CASE SUMMARY

Claimants alleged that Respondents Investors Associates, Proman, Narod, Reynolds, and MPR (collectively referred to as "Respondents") engaged in a pattern of fraud, misrepresentation, omission of material information, unauthorized transactions, and unsuitable transactions in violation of federal and state securities laws, the NASD rules of fair practice, various Wisconsin Statutes, and common law. Claimants also contended that Respondents made no attempt to ascertain Claimants' income, trading experience, or investment objectives. Claimants asserted that Respondents sent their confirmations and monthly statements to the wrong address. Claimants further maintained that Respondents misrepresented costs and terms of various investments.

In their respective Statements of Answer on file, all Respondents generally denied that they were responsible for Claimants' losses. Respondents made various affirmative defenses, including: Claimants failed to state a claim upon which relief can be granted; Claimants failed to mitigate their damages; Claimants failed to adequately particularize their claims; the claims are barred by the doctrines of ratification, waiver and estoppel; Claimants sustained no compensatory damages; Claimants' losses were due solely to market forces and to no other cause; and if any damage or loss was sustained, such damage or loss was caused by Claimants' own fault or actions.

RELIEF REQUESTED

Claimants requested compensatory damages in the approximate amount of \$14,050, lost opportunity damages, double damages, as well as attorney fees, interest, costs, and punitive damages in the amount of \$100,000.

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

OTHER ISSUES CONSIDERED & DECIDED

Claimants' Motion to Amend was granted.

Claimants' Motion for Sanctions was granted. The award below encompasses all sanctions assessed against Respondents.

Respondent Reynolds did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed NASD Submission Agreement but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

Respondents did not appear at the hearing. After reviewing the record and considering the representations of Claimants, the undersigned arbitrators have determined that Respondents have received due notice of the hearing as required under §10315 of the Code, and that arbitration of this matter would proceed pursuant to §10318 of the Code.

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

- (1) That Respondents Investors Associates, Inc. Matthew Proman, Randy Narod and David Reynolds are jointly and severally liable for and shall pay to Claimants Ingram and Rebecca Liljestrand the sum of \$11,419.24 as compensatory damages and \$1,223.95 as interest for a total of \$12,643.19;
- (2) That Respondent Meyers Pollock and Robbins, Inc. is liable for and shall pay to Claimants Ingram and Rebecca Liljestrand the sum of \$1.00 as compensatory damages;
- (3) That Respondents Investors Associates, Inc., Matthew Proman, Randy Narod and David Reynolds are jointly and severally liable for and shall pay to Claimants Ingram and Rebecca Liljestrand the sum of \$11,419.24 under the Wisconsin Organized Crime Control Act ("Little Rico"), Section 946.80, et. seq.; and Section 946.87(4), Wis. Stats.;

- (4) That Respondents Investors Associates, Inc., Matthew Proman, Randy Narod and David Reynolds are jointly and severally liable for and shall pay to Claimants Ingram and Rebecca Liljestrand their attorney fees in the amount of \$12,852.50, plus their costs in the amount of \$286.50;
- (5) That Claimants Ingram and Rebecca Liljestrand shall recover \$11,419.24 for punitive damages, in the aggregate, from Respondents as set forth in paragraphs six (6) and seven (7) below;
- (6) As to Respondents Matthew Proman, Randy Narod and David Reynolds: the panel finds that each Respondent's conduct was an outrageous, wanton and willful disregard of Claimants' rights and interests, in that Respondents each made misrepresentations to Claimants in connection with the solicitation and sale of the securities which were the subject matter of the claim of the Claimants; and at a time during which the Respondents had no account forms on file and thus they had no basis, and could not have any basis, whereby to ascertain whether or not the securities solicited and sold to Claimants were suitable for them;
- (7) As to Respondent Investors Associates, Inc.: the panel finds that this Respondent's conduct was an outrageous and willful disregard of Claimants' rights and interests, in that this Respondent wantonly failed to exercise its supervisory responsibilities and duties owed to Claimants; and
- (8) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$750 = \$1,500 in forum fees. Total forum fees = \$1,500. 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 by the Claimants.

Pursuant to §10332(c) of the Code, Respondents Investors Associates, Inc. Matthew Proman, Randy Narod and David Reynolds, and Meyers Pollock and Robbins, Inc. are jointly and severally liable for and shall pay forum fees in the amount of \$1,500.

Pursuant to Rule 10333 of the Code, Respondent MPR has paid to NASD Regulation, Inc. the \$350 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Investors Associates shall pay to NASD Regulation, Inc. the \$350 past due member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures:

/s/ Percy L. Julian

Percy L. Julian
Panelist
Public Arbitrator

September 2, 1998

Dated:

/s/ Gerald A. Grossman, Esq.

Gerald A. Grossman, Esq.
Panelist
Industry Arbitrator

September 1, 1998

Dated:

Arbitrator's Signature, Concurring, in part, and Dissenting, in part:

Although I concur with all other aspects of the award, I would have dismissed Claimants' claim against Respondent Meyers Pollock and Robbins, Inc.

/s/ Michael B. Laikin, Esq.

Michael B. Laikin, Esq.
Chairperson
Public Arbitrator

September 1, 1998

Dated:

For NASD Regulation use only:

Date award served on parties: September 2, 1998