

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)
)
Name of Claimant(s))
)
Jack Friedlander, as Trustee for Jack)
Friedlander Trusts #2 and #3)
Lois Nichamin as Trustee of the)
Lois Nichamin Revocable Living Trust)
Larry Nichamin, as Trustee for the)
Larry Nichamin Trust)
)
)
Name of Respondent(s))
)
Margaretten Securities Corporation)
James Ira Michelson)
Ellen Margaretten)
Burton W. Blank)
Harvey Labban)

Case Nos. 90-01044

REPRESENTATION

For Claimants, Jack Friedlander as Trustee for the Jack Friedlander Trusts #2 and #3 ("Jack Friedlander") and Larry Nichamin as Trustee of the Larry Nichamin Trust ("Larry Nichamin") and Lois Nichamin as Trustee of the Lois Nichamin Revocable Living Trust ("Lois Nichamin"): Robert W. Pearce, Esq. of Lerner and Pearce, P.A.

For Respondents, Margaretten Securities Corp. ("MSC") and Ellen Margaretten ("Margaretten"): Constance Grayson, Esq. of Schantz, Schatzman & Aaronson, P.A.

For Respondents, James Ira Michelson ("Michelson"), Harvey Labban ("Labban") and Burton Blank ("Blank"): pro-se.

CASE INFORMATION

Statements of Claim filed on: April 10, 1990.

Claimants' Submission Agreements signed on: May 1, 1990.

Respondent, Blank's, Statement of Answer filed on: August 20, 1990.

Respondent, Blank's, Submission Agreement signed on August 20, 1990.

Respondent, Michelson's, Statement of Answer filed on January 24, 1991.

Respondent, Michelson did not file a Submission Agreement and Respondents, MSC, Margaretten and Labban, did not file Statements of Answer or sign Submission Agreements as required by Sections 12 and 25 of the Code. Respondent, MSC, being an NASD member firm and Respondents, Margaretten, Labban and Michelson being persons associated with an NASD member firm at the

time this controversy arose.

HEARING INFORMATION

On October 8, 1991, in Fort Lauderdale, Florida, a hearing lasting one (1) session was conducted.

CASE SUMMARY

Claimants alleged that Respondents, Margaretten Securities Corporation, James Ira Michelson, Ellen A. Margaretten, Harvey Labban, Burton W. Blank, were liable for: violation of Chapter 517, Florida Statutes (Florida Blue Sky Laws), Chapter 772.01 et seq., Florida Statutes (RICO), common law fraud, negligence, negligent supervision and breach of fiduciary duty. Specifically, Claimants alleged that Respondent, Michelson misrepresented the nature, mechanics, suitability, and risks associated with an investment he recommended involving the purchase of stripped coupon mortgage backed securities and pass through certificates. The remaining parties were allegedly liable under the "control person" and respondent superior principles of law. The Respondents denied the allegations and alleged various affirmative defenses.

Respondent, Blank, denied all allegations of wrongdoing and alleged affirmative defenses. Respondents, MSC and Margaretten and Labban neither filed Answers nor appeared at the hearing, Respondent, Michelson denied all allegations of wrongdoing.

RELIEF REQUESTED

Claimant, Jack Friedlander, requested \$175,500.28 compensatory damages, including interest and \$526,500.00 for treble/punitive damages for the Jack Friedlander Trust #2. Claimant Jack Friedlander requested \$866,947.67 compensatory damages, including interest and \$2,600,843.01 for treble/punitive damages for the Jack Friedlander Trust #3. Claimant, Larry Nichamin requested \$174,385.10 compensatory damages, including interest and \$523,155.30 for treble /punitive damages. Claimant, Lois Nichamin requested \$403,807.06 compensatory damages, including interest, and \$1,211,421.18 for treble/punitive damages. All of the Claimants requested attorney's fees, costs and forum fees.

Respondents, Blank and Michelson, requested dismissal of the claims.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel finds that Jurisdiction exists over Respondents, Michelson, MSC, Margaretten and Labban, pursuant to Sections 12 and 25 of the Code, Respondent, MSC, being an NASD member firm and Respondents, Michelson, Margaretten and Labban, being persons associated with an NASD member firm at the time this controversy arose.
2. This Panel finds that Respondent, Labban, did not receive service of the claim and, therefore, Respondent, Labban, was dismissed from the case without prejudice.

3. Respondents, Margaretten and Michelson, had filed bankruptcy. Pursuant to the Orders of the Bankruptcy Court for the Southern District of Florida in case numbers 89-34963-BKC-X and 90-18513-AJC dated January 29, 1991 and July 27, 1990, respectively, the Automatic Stay provisions of the Bankruptcy Code were lifted for the purpose of proceeding against Respondents, Margaretten and Michelson, in this arbitration. This Panel finds service on and adequate notice Respondents, Margaretten and Michelson, for the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2.

4. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service on and adequate notice to Respondent, MSC.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Blank, is found not liable and, therefore, the claims against him are hereby dismissed.

2. Respondents, Michelson, MSC and Margaretten, are found liable, jointly and severally, for violations of Sections 517.301 and 517.211, Florida Statutes and shall pay to Claimant, Lois Nichamin, the amount of \$403,807.06 inclusive of interest.

3. Respondents, Michelson, MSC and Margaretten, are found liable, jointly and severally, for violations of Sections 517.301 and 517.211 Florida Statutes and shall pay to Claimant, Larry Nichamin the amount of \$174,385.10 inclusive of interest.

4. Respondents, Michelson, MSC and Margaretten, are found liable, jointly and severally, for violations of Sections 517.301 and 517.211, Florida Statutes and shall pay to Claimant, Jack Friedlander the amount of \$175,500.28 inclusive of interest for the Jack Friedlander Trust #2 and \$866,947.67 inclusive of interest for the Jack Friedlander Trust #3.

5. Respondent, Michelson, is also found liable and shall pay to Claimants, Lois Nichamin, Larry Nichamin and Jack Friedlander the following further amounts for punitive damages. These amounts are equal to the actual damages listed in paragraphs 2, 3 and 4, above, and are in addition to those amounts:

\$403,807.06 to be paid to Lois Nichamin

\$174,385.10 to be paid to Larry Nichamin

\$175,500.28 to be paid to Jack Friedlander for the Jack Friedlander Trust #2 and \$866,947.67 to be paid to Jack Friedlander for the Jack Friedlander Trust #3.

Respondent, Michelson's fraudulent misrepresentations are found to have been willful, wanton and malicious and to warrant an Award of punitive damages. This Panel's authority to award punitive damages is based upon the Federal Arbitration Act and the case law interpreting that Act.

6. Claimants' requests for punitive damages against Respondents, MSC and Margaretten, are denied.

7. Respondents, Michelson, MSC and Margaretten, are also found liable, jointly and severally, for attorney's fees pursuant to Section 517.211, Florida Statutes and shall pay to all Claimants the total amount of \$25,000.00. This Panel's authority to award attorney's fees is based upon the Federal Arbitration Act and the case law interpreting that Act.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,000.00 (one session x \$1,000.00 per session). Respondents, Michelson, MSC and Margaretten, are hereby assessed \$1,000.00, jointly and severally, \$500.00 of which shall be paid directly to the Claimants, Lois and Larry Nichamin and \$500.00 of which shall be paid directly to Claimant, Jack Friedlander. Respondents, Michelson, MSC and Margaretten, are also assessed the \$250.00 non-refundable filing fee paid by Claimants Lois and Larry Nichamin and the \$250.00 non-refundable filing fee paid by Claimant, Jack Friedlander, which amounts shall also be paid directly to Claimants. The NASD shall retain the \$500.00 and the \$250.00 paid by Lois and Larry Nichamin and refund to them the overpayment of \$250.00 and shall retain the \$500.00 and \$250.00 paid by Jack Friedlander and refund to him the overpayment of \$250.00.

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

Concurring Arbitrators' Signatures

/s/
Joseph E. Bernstein, Esq.

/s/
Sterling F. Tremayne

/s/
Julius Schneider

Date of Decision: December 3, 1991