
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Kevin Smyth

Case No. 00-00440

Names of Respondents

Morgan, Taylor & Associates, Inc.
Jeffrey Harold Supinsky
Alfred Palagonia
John Ludemann
Gregory Small

REPRESENTATION OF PARTIES

For Kevin Smyth, hereinafter referred to as "Claimant": Michael P. Gilmore, Esq., Wexler & Burkhart, P.C., Mitchel Field, New York. On or about January 26, 2001, Michael P. Gilmore, Esq. of Sims, Moss, Kline & Davis, LLP, Mineola, New York, substituted as counsel for Claimant.

For Morgan, Taylor & Associates, Inc. ("Morgan Taylor"), Jeffrey Harold Supinsky ("Supinsky"), John Ludemann ("Ludemann"), and Gregory Small ("Small"): Charles M. O'Rourke, Esq., Woodbury, New York.

Respondent Alfred Palagonia ("Palagonia") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: February 1, 2000.

Claimant signed but did not date the Uniform Submission Agreement.

Statement of Answer filed by Respondents Morgan Taylor, Supinsky, Ludemann, and Small on or about: March 30, 2000.

Respondent Palagonia did not file a Statement of Answer.

Respondents Morgan Taylor, Supinsky, Palagonia, Ludemann, and Small did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted causes of action for violations of Chapter 517, Florida Statutes, negligence and breach of contract for the failure to deliver shares of stock in Diplomat Direct Marketing Corporation to Claimant.

Unless specifically admitted in their Answer, Respondents Morgan Taylor, Supinsky, Ludemann, and Small denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant did not maintain a brokerage account at Respondent Morgan Taylor; 2) Respondent Palagonia was never a registered broker with Respondent Morgan Taylor; 3) the transfer agent improperly shipped the stock certificates to Respondent Morgan Taylor after completion of the transaction at issue; 4) the stock certificates were lost; 5) Claimant failed to file an affidavit of lost stock certificates with the transfer agent; 6) Claimant failed to mitigate his damages by his contributory negligence and failure to obtain a bond to sell the shares of stock at issue; 7) Respondents Morgan Taylor, Supinsky, Small, and Ludemann did not recommend or effectuate an offer to sell securities to Claimant; 8) the transaction at issue was private and outside of Respondent Morgan Taylor; and 9) Claimant did not suffer a loss as the result of non-delivery of the stock certificates.

RELIEF REQUESTED

Claimant requested: 1) rescission, or in the alternative, compensatory damages in the amount of \$170,000.00; 2) punitive damages; 3) interest at the statutory rate of 10.00% or \$52,396.89; 4) attorneys' fees in the amount of \$35,000.00; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents Morgan Taylor, Supinsky, Ludemann, and Small requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Palagonia did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondent Palagonia has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Respondent Palagonia present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Palagonia did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondents Morgan Taylor, Supinsky, Ludemann, and Small did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code, and having answered the Statement of Claim and appeared at the evidentiary hearing, are bound by the determination of the Panel on all issues submitted.

The parties present at the evidentiary hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Morgan Taylor, Supinsky, Ludemann, and Small, are liable, jointly and severally, for their negligence and shall pay to Claimant compensatory damages in the amount of \$170,000.00, pre-judgment interest specifically excluded. Post-judgment interest under Rule 10330(h) of the Code is specifically excluded.
2. All claims as to Respondent Palagonia are denied.
3. Claimant's requests for punitive damages and attorneys' fees are denied.
4. All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

| | |
|--------------------------|------------|
| Initial claim filing fee | = \$300.00 |
|--------------------------|------------|

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,500.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$2,500.00 |

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|---|--------------|
| One (1) Pre-hearing session with Panel x \$1,125.00 | = \$1,125.00 |
|---|--------------|

Pre-hearing conference: September 8, 2000 1 session

Four (4) Hearing sessions x \$1,125.00 = \$4,500.00

Hearing Dates: March 22, 2001 2 sessions

March 23, 2001 2 sessions

Total Forum Fees = \$5,625.00

The Panel has assessed \$2,812.50 of the forum fees to Claimant.

The Panel has assessed \$2,812.50 of the forum fees jointly and severally to Respondents Morgan Taylor, Supinsky, Ludemann, and Small.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

| | | |
|---|---------------------|--------------|
| Initial Filing Fee | = \$ 300.00 | |
| Forum Fees | = \$2,812.50 | |
| Total Fees | = \$3,112.50 | |
| <u>Less payments</u> | <u>= \$1,425.00</u> | |
| Balance Due NASD Dispute Resolution, Inc. | | = \$1,687.50 |

Respondent Morgan Taylor be and hereby is solely liable for:

| | | |
|---|---------------------|----------|
| Member Fees | = \$4,600.00 | |
| Total Fees | = \$4,600.00 | |
| <u>Less payments</u> | <u>= \$4,600.00</u> | |
| Balance Due NASD Dispute Resolution, Inc. | | = \$0.00 |

Respondents Morgan Taylor, Supinsky, Ludemann, and Small be and hereby are jointly and severally liable for:

| | | |
|---|------------------|--------------|
| Forum Fees | = \$2,812.50 | |
| Total Fees | = \$2,812.50 | |
| <u>Less payments</u> | <u>= \$ 0.00</u> | |
| Balance Due NASD Dispute Resolution, Inc. | | = \$2,812.50 |

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

_____/s/_____
Russell E. Puckett, PhD
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
George J. Minnig
Industry Arbitrator


Signature Date

_____/s/_____
Maurice M. Feller, Esq.
Public Arbitrator

Signature Date

April 25, 2001
Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures


Russell E. Puckett, PhD
Public Arbitrator, Presiding Chair

4/23/01
Signature Date

George J. Minnig
Industry Arbitrator

Signature Date

Maurice M. Feller, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

Russell B. Puckett, PhD
Public Arbitrator, Presiding Chair

Signature Date


George I. Weinig
Industry Arbitrator

April 20 2001
Signature Date

Maurice M. Fuller, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Concurring Arbitrators' Signatures

Russell E. Puckett, PhD
Public Arbitrator, Presiding Chair

Signature Date

George J. Minnig
Industry Arbitrator

Signature Date

Maurice M. Feller, Esq.
Public Arbitrator

4-23-01
Signature Date

Date of Service (For NASD-DR office use only)