

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Slavica Sussann Ristic

and

00-04586
Scottsdale, Arizona

Name of Respondent

WestAmerica Investment Group
O.J. Wilkinson, IV
John M. Gersten

REPRESENTATION OF PARTIES

Slavica Sussann Ristic ("**Claimant**") was represented by Joseph A. Kendhammer, Esq., Kendhammer & Holden, L.L.C., Phoenix, Arizona.

WestAmerica Investment Group ("**Respondent WestAmerica**"), and John M. Gersten ("**Respondent Gersten**") were represented by Gary R. Blume, Esq., Blume Law Firm, P.C., Phoenix, Arizona.

O.J. Wilkinson, IV ("**Respondent Wilkinson**") was represented by Richard G. Himelrich, Esq., Alexander Poulos, Esq. and Frank Mead, Esq., Tiffany & Bosco, PA, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about November 3, 2000. Submission Agreement of Claimant Slavica Sussann Ristic was signed on October 25, 2000.

Answer of Respondent WestAmerica Investment Group was filed on or about April 11, 2001. Submission Agreement of Respondent WestAmerica Investment Group was signed on April 6, 2001 by Paula LaFon.

Answer of O.J. Wilkinson, IV was filed on or about March 16, 2001. Submission Agreement of Respondent O.J. Wilkinson, IV was signed on March 6, 2001.

Answer of Respondent John M. Gersten was filed on or about July 2, 2001. Submission Agreement of Respondent John M. Gersten was signed on June 20, 2001.

CASE SUMMARY

Claimant alleged that Respondent Wilkinson engaged in unsuitable trading in her account. Specifically, Claimant alleged that Respondent Wilkinson engaged in option trading, including puts and calls and never explained to Claimant the risks associated with options trading. Claimant also alleged that Respondents represented to her that the investment strategy that would be employed for her account was a conservative strategy that could earn 5% to 10% return a month without significant risk. Claimant further alleged that Respondents WestAmerica and Gersten failed to properly supervise Respondent Wilkinson.

In their Answers, Respondents WestAmerica and Gersten denied the allegations set forth in the Statement of Claim. Specifically, Respondents WestAmerica and Gersten stated that Claimant, by signing the Client Option Agreement, held herself out to be a sophisticated investor, knowledgeable concerning stock and options trading and requested that Respondent Wilkinson trade options on her behalf. In addition, these Respondents stated that they conducted themselves within the standards of the industry, reviewed activity in the account and ensured that the Claimant understood the nature of the trades and the risks of the investment strategy used by Respondent Wilkinson.

Respondent Wilkinson denied the allegations set forth in the Statement of Claim. Specifically, Respondent Wilkinson stated that Claimant was a speculator who came to him seeking to make fast profits through short term option trading. Respondent Wilkinson also stated that Claimant had heard about options before meeting him, knew what she wanted to do and was willing to speculate with her money. It was also stated that Claimant controlled the activity in her account. It was further stated that the risks of trading options were explained to Claimant, that Claimant was aware of the risk and accepted them.

RELIEF REQUESTED

Claimant requested damages against Respondents as follows:

- For damages in the amount of \$24,999.00;
- For interest at the legal rate of 10% per annum from the date of closing the account (November 1, 1998) to date (October 11, 2000) in the amount of \$1,890.00;
- For costs and attorneys' fees incurred in this claim;
- For such other and further relief as the Arbitrator deems just and proper.

Respondents WestAmerica Investment Group and John M. Gersten requested that Claimant take nothing and that all costs, fees and other expenses related to this arbitration be awarded to Respondent WestAmerica.

Respondent Wilkinson requested that the claims asserted against him be denied.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD Dispute Resolution, Inc. (the "NASD").

FINDINGS

Based upon the testimony, evidence and arguments presented, the undersigned arbitrator makes the following findings:

1. Respondent Wilkinson failed to exercise due diligence for properly and accurately ascertaining and reporting Claimant's financial condition, experience, comprehension, and suitability for investing in his highly speculative options trading program.
2. Respondent Wilkinson failed to properly or adequately inform or otherwise disclose to Claimant the extremely high degree of risk inherent in margin accounts or his options trading strategy, including how it worked and the potential for substantial loss.
3. Respondent Wilkinson's highly speculative options trading strategy was not suitable for Claimant and she was not qualified to participate therein in light of her originally reported financial condition, investment objectives, comprehension and lack of prior stock market sophistication and experience, and Respondents Wilkinson, Gersten and West America knew or should have known that.
4. Respondent Wilkinson did not have any written authorization from Claimant for discretionary trading in her account, but instead had only verbal authorization for such trading, which Respondents Wilkinson, Gersten and West America knew or should have known.
5. Respondent Wilkinson knowingly executed numerous discretionary trades in Claimant's account to implement his options trading strategies without written authorization to do so, which Respondents Gersten and West America knew or should have known.
6. Respondent Wilkinson failed to properly monitor the status of the securities and options he purchased in and for Claimant's account, which Respondents Gersten and West America knew or should have known.
7. In general, Respondents Gersten and West America failed to properly or adequately supervise or monitor options trading accounts; in particular, Respondents Gersten and West America failed to properly or adequately supervise Respondent Wilkinson in regard to his options trading strategies and the approval for and activity in Claimant's account.
8. In general, Respondents Gersten and West America failed to adequately ascertain or insure that Respondent Wilkinson was properly trained in dealing with clients, especially in regard to financially qualifying clients, including Claimant, and informing them about the meaning

and effect of the various forms required to open an account, including an options trading and margin account, and about the investment risks thereof; in particular, Respondents Gersten and West America failed to adequately ascertain or insure that Wilkinson was qualified or had the necessary or sufficient training and experience to even be involved in the marketing and implementation of his options trading strategies in order to adequately protect his clients when his strategies were unsuccessful, especially those clients without any prior options trading experience like Claimant.

9. Respondent West America, as an NASD member and employer of Respondents Gersten and Wilkinson, is responsible for their acts and omissions.
10. Although she clearly had the means and opportunity to do so, by her own admission, Claimant failed to exercise any, let alone due, diligence about Respondents Wilkinson and WestAmerica or about Wilkinson's highly speculative options trading program before she invested her money with Wilkinson and WestAmerica.
11. If Respondent Wilkinson made the representation to Claimant that his investment program was guaranteed to produce a return of 5-10% per month, that fact alone, should have alerted Claimant that his investment strategy was highly speculative and should be independently verified, given the fact that she is a college graduate with a bachelor's degree in business administration from Arizona State University and at the time was 28 years old with some prior business and marketing experience.
12. By her own admission, Claimant did not read any of the forms, agreements or documents provided by Respondents Wilkinson and WestAmerica before signing them.
13. Claimant totally disregarded the advice and warnings from her mother, who was present when Wilkinson told her about his investment program, and who is sophisticated in business and financial matters, regarding Wilkinson's investment program, and she entrusted her funds with Respondents Wilkinson and WestAmerica, relying instead on not only Wilkinson's representations but on the recommendations of her family dentist, who was using Wilkinson as his broker.
14. In addition, even if Respondent Wilkinson improperly represented to Claimant that his investment program was "guaranteed" to return 5-10% per month, she did nothing to independently verify that representation other than for considering her dentist's prior statement to that effect.
15. Claimant did nothing to investigate the soundness or nature of Respondent Wilkinson's options trading strategy during the time her investments utilizing that strategy were successful; it was only after she learned that she had suffered a substantial loss in one particular investment that she did any such investigation.

CONCLUSIONS

1. The acts and omissions of Respondents WestAmerica, Gersten and Wilkinson, individually

and collectively constitute violations of NASD Conduct Rules 2110, 2120, 2210, 2310, 2310-2, 2330, 2510 and 2860 in the manner described in above.

2. However, under the current law of this Circuit, Respondents' violations of NASD Conduct Rules by themselves do not give rise to a private cause of action for damages by Claimant. *Sparta Surgical Corp. v. National Association of Securities Dealers Inc.*, 159 F.3d 1209, (9th Cir. 1998) (citing *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 681 (9th Cir. 1980)).
3. Respondent Wilkinson's acts and omissions also constitute actionable negligence and misrepresentation under U.S. and/or Arizona laws and regulations; Respondent Gersten's acts and omissions also constitute actionable negligence and failure to supervise under U.S. and/or Arizona laws and regulations.
4. As Wilkinson's and Gersten's employer, WestAmerica is responsible for their acts and omissions described above.
5. Claimant's acts and omissions constitute reckless conduct and contributory negligence.
6. The losses Claimant sustained by investing with Respondents Wilkinson and WestAmerica resulted both from Respondents' acts and omissions and from her own acts and omissions as described above, and therefore, she is not entitled to recover any damages from any of the Respondents for those losses.

AWARD

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

1. Claimant is not awarded compensatory damages.
2. 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.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$150.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is WestAmerica Investment Group.

Member surcharge = \$ 600.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$1,000.00

Forum Fees and Assessments

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

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference(s): June 19, 2001 1 session

Four (4) Hearing sessions x \$450.00 = \$1,800.00
Hearing Date(s): November 6, 2001 2 sessions
November 7, 2001 2 sessions

The parties at the conclusion of the hearing on November 7, 2001 agreed to the assessment of an additional hearing session for the arbitrator to receive, review and consider the testimony, evidence and written closing arguments. = \$ 450.00

Total Forum Fees = \$2,700.00

The Arbitrator has assessed \$2,700.00 of the forum fees to WestAmerica Investment Group.

Fee Summary

Claimant, Slavica Sussann Ristic, shall be and hereby is liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 575.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 425.00

Respondent, WestAmerica Investment Group, shall be and hereby is liable for:

Member Fees	= \$2,200.00
<u>Forum Fees</u>	= \$2,700.00
Total Fees	= \$4,900.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Louis M. Parker - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Louis M. parker
Louis M. Parker
Public Arbitrator, Presiding Chair

November 29, 2001
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 00-04586
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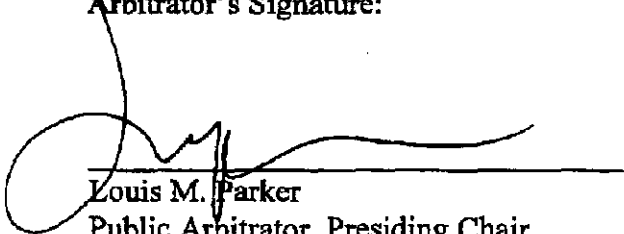
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ARBITRATION PANEL

Louis M. Parker - Public Arbitrator, Presiding Chair

Arbitrator's Signature:



Louis M. Parker
Public Arbitrator, Presiding Chair

11/29/01

Signature Date