
Award
NASD

In the Matter of the Arbitration Between:

Name of the Claimant
SFM Holdings Ltd. Partnership

Case Number: 01-01657

Name of the Respondent
Dain Rauscher Incorporated

Hearing Site: Boca Raton, FL

REPRESENTATION OF PARTIES

For SFM Holdings Ltd. Partnership, hereinafter referred to as "Claimant": Adam S. Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, FL.

For Dain Rauscher Incorporated, hereinafter referred to as "Respondent": James L. Robart, Esq., Lane Powell Spears Lubersky LLP, Seattle, WA.

CASE INFORMATION

Statement of Claim filed on or about: March 28, 2001.

Claimant signed the Uniform Submission Agreement: March 21, 2001.

Respondent signed the Uniform Submission Agreement: April 18, 2001.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: May 21, 2001.

Reply to Respondent's Answer and Motion to Dismiss filed by Claimant on or about: May 31, 2001.

Motion for Summary Judgment Dismissing Claimant's Claims filed by Respondent on or about: October 1, 2001.

Reply to Respondent's Motion for Summary Judgment Dismissing Claimant's Claims filed by Claimant on or about October 31, 2001.

Reply Brief in Support for Motion for Summary Judgment Dismissing Claimant's Claims filed by Respondent on or about: November 14, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligent supervision; intentional misrepresentation; and violations under Rule 2110 of NASD Rules of Fair Practice, Florida Securities Investor Act, Chapter 517, Florida Statutes, and Section 10(b)(5) of the Securities Exchange Act of 1934. The causes of action relate to Respondent's alleged mismanagement of margin calls on Presstek stock.

Unless specifically admitted in its Answer, Respondent denied all allegations made in the Statement of Claim, asserted various defenses, and filed a Motion to Dismiss.

RELIEF REQUESTED

Claimant requested rescission of the sale of 33,760 shares of Presstek stock at current stock price less the proceeds from unauthorized sales; loss of interest and appreciation for the 33,760 shares of Presstek stock sold; costs, expenses, disbursements, including attorney's fees and expert witness fees; and any other relief deemed just and proper.

Respondent requested that the Statement of Claim be dismissed with prejudice, filing fees and hearing costs be assessed against Claimant, attorney's fees and costs of this arbitration be assessed against Claimant, and any relief deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 30, 2001, the undersigned arbitrators (the "Panel") issued the following order that granted Respondent's Motion for Summary Judgment Dismissing Claimant's Claims:

Upon consideration of Respondent's Motion for Summary Judgment Dismissing Claimant's Claims, Claimant's Reply to Respondent's Motion for Summary Judgment Dismissing Claimant's Claims, and Respondent's Reply Brief in Support of Motion, the Panel finds and determines that:

- 1) Based on the pleadings and exhibits thereto, no fact material to the disposition of this matter is in dispute;
- 2) The sales of Claimant's securities by Respondent pursuant to Respondent's margin requirements, which sales constitute the gravamen of the Claim, were made in keeping with the provisions of the Margin Account Agreement between Claimant and Respondent;
- 3) Claimant's prayer for relief in the form of rescission of the sales would require Respondent to restore to Claimant the sold securities, judicially noticed to be currently trading in the vicinity of \$6.00 per share, and would correlatively require Claimant to restore Respondent the proceeds of the sales, which ranged from \$14.87 to \$18.86 and were credited by Respondent to Claimant's margin debt, thus placing Claimant in a worse position than it is without such relief;
- 4) Claimant has not been damaged, inasmuch as the shares were sold by Respondent for Claimant's account at market values higher than those available subsequent to the sales.

AWARD

After considering the pleadings, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Statement of Claim is dismissed with prejudice.

All other relief requested and not expressly granted is denied, including any and all claims under Section 517, Florida Statutes.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 250.00

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. Accordingly, Respondent is assessed:

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,000.00

Adjournment Fees

Adjournment fees were not assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A 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 with the Panel @ \$ 1,000.00	= \$ 1,000.00
Pre-hearing conference: September 11, 2001 1 session	

Total Forum Fees	= \$ 1,000.00
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1. The Panel has assessed \$ 500.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 500.00 of the forum fees to Respondent.

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Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Administrative costs were not incurred in this matter.

Fee Summary

1. Claimant is solely liable for:

Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 750.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD	= \$ 0.00

2. Respondent is solely liable for:

Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 4,300.00
<u>Less payments</u>	= \$ 3,800.00
Balance Due NASD	= \$ 500.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Edward Aptaker, Esq.

-

Public Arbitrator, Presiding Chairperson

Bill L. Richards

-

Public Arbitrator

Gustavus L. Pearthree

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Edward Aptaker, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

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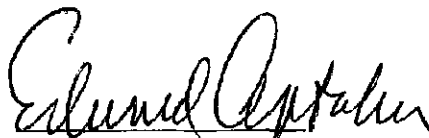
ARBITRATOR

Edward Aptaker, Esq.
Bill L. Richards
Gustavus L. Pearthree

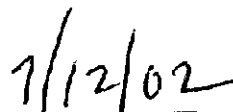
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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

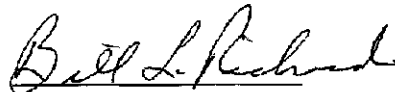


Edward Aptaker, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Bill L. Richards
Public Arbitrator



Signature Date

Gustavus L. Pearthree
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

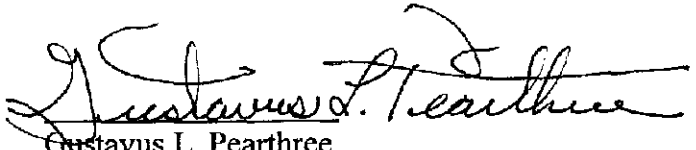
NASD

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Bill L. Richards
Public Arbitrator

Signature Date


Gustavus L. Pearthree
Non-Public Arbitrator



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/s/

Bill L. Richards
Public Arbitrator

Signature Date

/s/

Gustavus L. Pearthree
Non-Public Arbitrator

Signature Date

July 19, 2002

Date of Service (For NASD office use only)