

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Great American Airways Claimant

vs.

D. H. Blair & Co., Inc. and Respondents
Richard Stoyeck

AWARD

CASE NOS. 86-00279
86-00280

Great American Airways Claimant

vs.

Bear Stearns & Co., Inc. and Respondents
Richard StoyeckSUMMARY OF ISSUES

Claimant Great American Airways ("GAA") filed the above-captioned claims on January 2, 1986. The two cases were consolidated for hearing and decision on July 20, 1988 per stipulation by all parties.

Prior to this hearing, the above-captioned cases were previously scheduled for hearing on five different occasions and were postponed four times at Claimant's request.

In the Statement of Claim against Bear Stearns & Co., Inc. ("Bear Stearns") and Richard Stoyeck ("Stoyeck"), Claimant alleged the following: misrepresentations in January, 1984 which dissuaded Claimant from selling its Commodore International common stock and induced it into purchasing additional shares of Commodore stock; unauthorized sale of Commodore stock in September, 1984; failure to timely execute an order to sell Commodore stock in December, 1984; misrepresentations that caused Claimant to invest in speculative stocks including purchasing shares of Douglas & Lomanson, Texascon, Mesa Offshore and MGM; unauthorized sale of Mesa and MGM in December, 1984; repeated assurances by Stoyeck that his stock recommendations were guaranteed which caused GAA to invest in speculative stocks including shares of Safeguard Scientifics, Inc. and Arkla, Inc.; a pattern of excessive and unauthorized trading and excessive commissions charged in late 1984 or early 1985; unauthorized transfer of the securities in Claimant's account at Bear Stearns to an account at D. H. Blair & Co.; failure to comply with the "Know Your Customer" rule and violations of the National Association of Securities Dealers, Inc. Rules of Conduct; breach of fiduciary duty; and breach of contract.

Respondents denied the allegations in the claim and maintained that GAA, through its president, Robert E. Stephan ("Stephan"), opened the account in January, 1984 and actively engaged in a series of stock and stock option transactions until February, 1985 when all trading activity ceased and the account was transferred soon thereafter. Respondents further maintained that: all transactions were authorized by Stephan personally; all transactions were within the scope of Claimant's investment objectives indicated as "income" and "trading profits" upon opening its account; that Claimant, through Stephan, expressed a desire to engage in all forms of options trading and acknowledged receiving and understanding a separate pamphlet explaining the risks of options trading. Respondents further denied that Stoyeck dissuaded Claimant from selling Commodore stock or otherwise made misrepresentation about Commodore; denied that any sales of Commodore stocks were unauthorized; denied that Stoyeck delayed in executing an order to sell Commodore in December, 1984; denied that any stock or option trades were unsuitable; denied that Respondents failed to comply with the "Know Your Customer" rule; denied a pattern of excessive trading and maintained that Claimant controlled the activity in its account; denied charging excessive commissions; denied making any misrepresentations to Claimant; and denied that Stoyeck guaranteed any of his recommendations to Claimant.

In the Statement of Claim against D. H. Blair & Co., Inc. ("Blair") and Stoyeck, Claimant alleged the following: the unauthorized transfer of the securities in Claimant's account some time in 1985 to an account at D. H. Blair; unauthorized trading; violation of state and federal laws; violation of the applicable rules of the New York Stock Exchange ("NYSE") and National Association of Securities Dealers, Inc. ("NASD"); breach of fiduciary duty; breach of contract; and alleged that it was deprived of the opportunity to control and direct its investment decisions and that it was deprived of the profits on its investments which it would otherwise have had, and which would have been equal to or in excess of the rise in securities investments experienced generally in the marketplace in the relevant time period.

Respondent D. H. Blair & Co., Inc. denied the allegations in the claim and maintained that the account transfer to Blair was accompanied by Claimant's submission to Blair of a W-9 form setting forth Claimant's basis for exemption from backup withholding requirements; that during the life of the account at Blair, Claimant received monthly statements and confirmations and engaged in verbal communications between Stoyeck and Stephan, and failed to object to any transaction or attempt to have any trades rescinded on the grounds the transaction was unauthorized; and that all investments in the account were compatible with Claimant's investment history and investment objectives of long-term growth and income. Respondent Blair cross-claimed against Respondent Stoyeck for contribution and/or indemnification for any damages that Claimant is awarded by reason of the acts of Stoyeck.

Respondent Richard Stoyeck denied the following: that Claimant's securities were transferred without Claimant's knowledge, consent or authorization;

that he engaged in any unauthorized transactions or unauthorized discretion in Claimant's account; denied making any false or misleading statements to GAA; denied that he breached any alleged fiduciary or contractual duty owed to GAA; denied that Claimant was deprived of the opportunity to control and direct its investment decisions or deprived of the proceeds of its investments; and denied any alleged violation of state or federal securities laws, rules, and regulations, or any applicable NYSE or NASD industry rules. Respondent Stoyeck filed a counterclaim against Claimant and alleged that GAA's purpose in filing this claim against him is to unlawfully harass and injure Stoyeck and his reputation in the securities industry, and to maliciously cause Stoyeck to bear needless and burdensome costs and expenses of defending GAA's claim. Respondent Stoyeck replied to the cross-claim of Blair and denied that if Claimant is found to have sustained any damages that he was the cause of such damages and denied that Blair is entitled to contribution and/or indemnification from Stoyeck for any award GAA may sustain against Blair.

Claimant denied each and every allegation of Stoyeck's counterclaim and alleged that there have been no defamatory statements made with respect to Stoyeck; that there is an absolute privilege with respect to the filing of its claim; that anything alleged concerning Stoyeck is the truth; that GAA has not acted willfully, maliciously, raucously or wantonly; that there has been no damage to Stoyeck's reputation; and that there is no basis for any claim with respect to Stoyeck spending monies for his defense and that GAA is not obligated to provide any contribution towards funds so expended.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended at the hearing, in the amount of \$45,917.26 for margin interest paid, \$123,875.00 for failure to sell Commodore, \$249,054.00 for the loss on securities still held on December 31, 1988, \$52,713.00 for the unauthorized transfer of securities, and attorneys' fees and costs.

Respondents requested dismissal of the claim and an award of attorneys' fees and costs.

DAMAGES AND RELIEF AWARDED

On April 26, 27 and 28, 1989 in Las Vegas, Nevada, the undersigned arbitrators heard the controversy in seven sessions between the parties as set forth in submissions to arbitration signed by Claimant on March 10, 1986 and by Respondents D. H. Blair & Co., Inc. on July 7, 1986, Bear Stearns & Co., Inc. on May 15, 1986 and Richard Stoyeck on May 22, 1986. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the post-hearing submissions, has determined in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim is hereby dismissed.

2. The panel, finding no authority to award attorneys' fees, hereby dismisses all counterclaims.

3. The parties shall each bear their respective costs including attorneys' fees.

4. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1,250.00 filing fees previously deposited by the Claimant.


OTHER ISSUES

At the close of the hearing in this matter, the arbitrators directed Respondents to file post-hearing submissions citing legal authority supporting Respondents' claims for an award of attorneys' fees and for Claimant to file a response.

The parties stipulated to the execution and service of this award in counterpart copies.

PRESIDING ARBITRATORS

DATE SERVED: 08/24/89


Douglas Edwards

Marc C. Scott, Jr.

Michael L. Dierson

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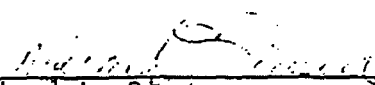
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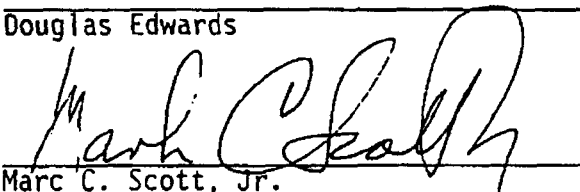
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