

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

John Varnas

Claimant

vs.

Robert L. Davidson, Jr.

Respondent

AWARD

CASE NO. 87-01008

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on June 15, 1987. Claimant alleged Respondent made an unauthorized purchase of Franklin Custodian Funds, and then deducted a commission from Claimant's shares of the Ryan Fund when Claimant requested the Franklin Fund purchase be rescinded. Claimant further alleged he was not given a Fund prospectus.

Respondent denied the purchase of Franklin Custodial Fund was unauthorized. Respondent asserted the deduction from Claimant's shares of the Ryan Fund was necessitated by Claimant's failure to make full payment for the Franklin Custodial Fund, which resulted in an unsecured debit balance in Claimant's Prudential-Bache account. Respondent denied failing to give a Franklin Fund prospectus to Claimant.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of \$3,800.95 plus interest, costs and attorneys' fees.

Respondent requested dismissal of all claims.

DAMAGES AND RELIEF AWARDED

On March 14 and June 1, 1989, and February 16 and April 12, 1990 in Portland, Oregon, the undersigned arbitrator heard the controversy in four sessions between the parties as set forth in submissions to arbitration signed by Claimant on June 9, 1987. Respondent did not file a notarized submission agreement, but filed an answer to the Statement of Claim and appeared in person at the first hearing session on March 14, 1989, and by telephone conference call on June 1, 1989 and February 16, 1990. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. All Claims brought by Claimant are dismissed.

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

3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$100.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrator.

OTHER ISSUES

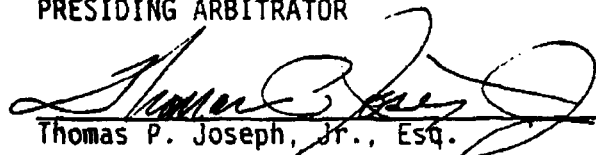
The first hearing session on March 14, 1989 was convened with all parties present; it was abruptly terminated by the Claimant, who left to attend his ill wife. With the panel's permission and notification to Claimant before he left the hearing, the Respondent was permitted to remain and put on his case for the panel. The hearing session on June 1, 1989, at which Respondent was permitted to appear by telephone conference call, was terminated and re-scheduled when it became apparent that several hours would be needed by Claimant to read the transcript of the portion of the March 14 hearing for which he was not present and to prepare his questions for cross-examination of Respondent. The third hearing session was set for February 14, 1990; on February 13, 1990, this date was changed to February 16, 1990, with the panel's permission and at the request of Respondent's counsel, who had just experienced a family emergency. A detailed message regarding the new date was left with a Ms. Cox at Claimant's home. Claimant called the NASD the following day and said he would not attend the rescheduled hearing.

On February 16, 1990, the hearing convened in Portland, Oregon, with the Chairman on-site and the Respondent and his counsel on a telephone conference hook-up. Claimant was contacted twice by conference call, but refused to remain on the line. Pursuant to Section 29 of the Code of Arbitration Procedure, the Chairman decided to proceed with the hearing session. Without hearing further testimony, and upon due reflection, the Chairman decided he had heard and read sufficient evidence to render an award. The hearing was then declared closed.

A petition to reopen was granted and a further session was held on April 12, 1990. Claimant was present in person and Respondent appeared by telephone conference call. The hearing closed at approximately 12:00 noon.

PRESIDING ARBITRATOR

DATE SERVED: 06/25/90


Thomas P. Joseph, Jr., Esq.