

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
FRANK CARLINO,)
Claimant,)
vs.) Case #87-01674
Award
BROOKS, WEINGER, ROBBINS & LEEDS, INC.,)
SHELDON WINN and SHELDON PITTLEMAN,)
Respondents.)

Heard before the member of the Arbitration Panel:

Craig Edward Stein, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on September 4, 1987. The hearing was conducted in Fort Lauderdale, Florida on August 11, 1989 with a total of one (1) session.

Claimant, Frank Carlino ("Carlino") alleged that Respondents Brooks, Weinger, Robbins & Leeds, Inc. and or its successor ("Brooks"), Sheldon Winn ("Winn") and Sheldon Pittleman ("Pittleman") failed to execute a purchase transaction; breached their fiduciary duties; were negligent; and that Brooks was negligent in its supervision of Claimant's account. Respondents, Brooks and Pittleman, denied all allegations of wrongdoing and allege the affirmative defenses of: failure to state a claim; damages resulted from Claimant's own conduct; damages are the result of market conditions or other factors beyond the control of Respondents; laches; waiver; and estoppel. Respondent, Winn, did not file an Answer.

RELIEF REQUESTED

Claimant requested damages in the amount of \$4,062.50, interest, costs, punitive damages and attorney's fees. Respondents, Brooks and Pittleman, requested dismissal of the claims, costs, attorney's fees and other relief. Respondent, Winn, made no request.

AWARD

On August 11, 1989, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on August 31, 1987, and by Respondent, Pittleman, on April 4, 1988. 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. 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 originals remain on file with the NASD, Inc.
2. Respondent, Brooks, submitted its Answer but failed to file a Uniform Submission agreement, and failed to appear at the hearing of this matter. That Brooks had notice of the hearing in this matter is evidenced by the fact that its counsel requested an adjournment of the hearing originally scheduled for July 12, 1989 and continued due to withdrawal of its counsel at the request of Brooks and Pittleman.
3. Notice of the hearing on August 11, 1989 was sent by certified mail to Brooks' former counsel, Thomas Rigilano. Brooks never provided the NASD, Inc. with the name or address of substitute counsel or other representative.
4. Respondents, Winn and Pittleman, are found not liable to Claimant and, therefore, all claims against them are hereby dismissed.
5. Respondent, Brooks, is to be liable to Claimant and shall pay to Claimant damages in the amount of Four Thousand Sixty Two and 50/100 (\$4,062.50) Dollars, plus interest at the legal rate of 12% per annum in the amount of One Thousand One Hundred Seventy Eight and 13/100 (\$1,178.13) Dollars, for a total of Five Thousand Two Hundred Forty and 63/100 (\$5,240.63) Dollars.
6. Claimant's request for attorney's fees is hereby denied in all respects.
7. Claimant waived his original claim for punitive damages and that issue was not addressed by the arbitrator.
8. Pursuant to Section 43 of the Code, Respondent, Brooks, is hereby assessed forum fees in the amount of One Hundred and 00/100 (\$100.00) Dollars which it shall pay directly to the Claimant. The NASD, Inc. shall retain the One Hundred and 00/100 (\$100.00) Dollar filing fee deposited by Claimant for such fees.
9. Pursuant to Section 30(b) of the Code, Brooks is hereby assessed a postponement fee of One Hundred and 00/100 (\$100.00) Dollars which it shall pay directly to Pittleman. The NASD, Inc. shall retain the One Hundred and 00/100 (\$100.00) Dollar adjournment fee submitted by Pittleman.

OTHER ISSUES

None.

ARBITRATOR CONCURRING

Craig Edward Stein, Esq.

Dated: August 14, 1989