

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
Linda Phillips,)
)
) Claimant,)
) Case #87-01807
vs.) Award
)
Donald Stoghill and)
Colin J. Breen,)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

John P. Byram
Jackson L. Morris
Regar Mickler

CASE SUMMARY

This claim was filed with the NASD, Inc. on March 3, 1988. The hearing was conducted in Tampa, Florida, with a total of One (1) session. Claimant, Linda Phillips ("Phillips") alleged Respondent, Donald Stoghill ("Stoghill") fraudulently misrepresented the risks involved and amount of subscription of a new issue of stock and that Respondent, Colin Breen ("Breen") failed to supervise Stoghill. Respondent, Breen, claims Stoghill was properly supervised and denies any knowledge of any alleged misrepresentations made to Claimant by Stoghill.

RELIEF REQUESTED

Claimant, Phillips, requested damages of Ten Thousand Seven Hundred Fifty and 00/100 (\$10,750.00) Dollars. Respondent, Breen, requested dismissal of claim. Respondent, Stoghill, failed to appear at this hearing.

AWARD

On June 9, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on September 18, 1987, and by Respondent, Breen, on March 1, 1988 and not signed by Stoghill as required pursuant to Section 12(a) of the NASD, Inc. Code of Arbitration Procedure ("Code"). Respondent, Stoghill, being a person associated with an NASD member firm, MacPeg, Ross, O'Connell and Goldaber, Inc. during the time this controversy arose. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, and Respondent, Stoghill, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding his knowledge of this arbitration as evidenced more fully below, has determined in full and final resolution of the issues submitted for determination as follows:

1. Jurisdiction exists pursuant to Section 12 of the Code.
2. The Claimant and Respondent, Breen, 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, Phillips and Breen have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD, Inc. Respondent, Stoghill, having failed to appear at this hearing will be deemed to have waived any objection to this Award procedure.
3. Respondent, Stoghill, shall be and hereby is liable and shall pay to Claimant the amount of One Thousand and 00/100 (\$1,000) Dollars.
4. Respondent, Breen, shall not be and hereby is not liable to the Claimant and, therefore, all claims against him shall be and hereby are dismissed.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Claimant shall be and is hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars. The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant for such forum fees.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondent, Stoghill, the reasons will again be set forth here. The NASD, Inc. has made every attempt to locate and serve Stoghill with notice of this hearing as demonstrated by the following record evidence:

- a). December 14, 1987, service of claim on Stoghill at MacPeg, Ross, O'Connell and Goldaber, Inc., North Village Green, Bldg. D., Levittown, NY 11756 by Certified Mail (while no receipt was returned to the NASD, Inc., neither was this mail ever returned as unclaimed, as evidenced by Arbitrators Exhibit #2(a) and 2(b)).
- b). May 31, 1988, note in file from Martin Gofberg stating that an attempt to locate Stoghill was made and a letter to the Claimant informing her of the attempt was sent on January 26, 1988. The note also states that Stoghill is not listed in the NASD Central Registration Depository; as evidenced by Arbitrators Exhibit 2(c)).

- c). February 3, 1989, Confirmation memo setting forth the date of the hearing was sent by Certified Mail to Stoghill at the MacPeg, Ross address (while no receipt was returned to the NASD, Inc., neither was this mail ever returned as unclaimed; as evidenced by Arbitrators Exhibit #2(d)).
- d). June 7, 1989, Staff Attorney, Alan Foxman, attempted to call Stoghill at MacPeg, Ross using the phone numbers listed in Standard & Poor's Security Dealers of North America, copyright 1988. Mr. Foxman phoned all four numbers listed and found they were either not in service or were assigned to another company and that Stoghill did not work there (as evidenced by Arbitrators Exhibit #2(e)).

ARBITRATORS CONCURRING

John P. Byram
Jackson L. Morris
Regar Mickler

Dated: July 5, 1989