

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
Robert J. Conine,)
) Claimant,)
) Case #87-01879
vs.) Award
)
Graystone Nash, Inc., Brady Neeld,)
Donald Eubanks and Outwater & Wells, Inc.)
)
Respondents.)

Heard before the members of the Arbitration Panel:

George Felos, Esq.
Mr. Theodore F. Chive
Mr. A. Grant Bohl

CASE SUMMARY

This claim was filed with the NASD, Inc. on October 5, 1987. The hearing was conducted in Tampa, Florida on August 14, 1989 with a total of 2 sessions.

Claimant, Robert J. Conine ("Conine") alleged that Respondents, Graystone Nash, Inc. ("Nash"), Brady Neeld ("Neeld"), Donald Eubanks ("Eubanks") and Outwater & Wells, Inc. ("Outwater") were liable for violating Florida Statute Section 517.301 and for negligence. Specifically, Conine alleged that Respondents sold more shares of Stock than Conine had in his account. Respondents, Nash, Neeld and Eubanks alleged that Claimant did not notify them that Claimant's stock had undergone a 5 for 1 reverse stock split and that Respondents had relied on Conine's representations as to the amount of stock he owned. Respondents, Nash, Neeld and Eubanks asserted a counterclaim and alleged: fraud; conversion; civil theft; negligence and unjust enrichment in that they were forced to cover the amount of shares sold which Conine did not own. Respondent, Outwater, denied liability and asserted a counterclaim against Claimant alleging fraud. Claimant denied liability to Outwater and, in answering Nash, Neeld and Eubanks' counterclaim alleged that he was unaware of the reverse stock split and asserted the affirmative defenses of: comparative negligence; unilateral mistake; mutual mistake; estoppel, waiver and laches.

RELIEF REQUESTED

Claimant requested damages in the amount of One Hundred Fourteen Thousand and 00/100 (\$114,000.00) Dollars plus interest, attorney's fees, other costs, and dismissal of Respondents' counterclaims. Respondents requested dismissal of the claim and costs. Respondent, Nash requested, in its counterclaim, damages in the amount of Twenty Nine Thousand Eight Hundred Thirty-Two and 00/100 (\$29,832.00) Dollars plus interest, costs, attorney's fees and treble damages pursuant to Florida Statutes Section 772.11 and Section 812.014. Respondent, Outwater requested, in its counterclaim, unspecified damages, punitive damages, attorney's fees and other costs.

AWARD

On August 14, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 2, 1987, and by Respondents Eubanks and Neeld on January 15, 1988, by Respondent, Nash on January 6, 1988 and by Respondent Outwater on January 7, 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 executed. 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. Respondents, Nash, Neeld, Eubanks and Outwater are not liable to Claimant and therefore all claims against them are hereby dismissed.
3. Claimant/Counter Respondent, Conine is hereby liable and shall pay to Respondent/Counter Claimant, Nash, the amount of Twenty Nine Thousand Eight Hundred Thirty-Two and 50/100 (\$29,832.50) Dollars.
4. Claimant/Counter Respondent, Conine is hereby liable and shall pay to Respondent/Counter Claimant, Nash, the further amount of Eight Thousand Five Hundred Twenty-Four and 93/100 (\$8,524.93) Dollars as interest at the legal rate of 12% compounded annually.
5. Claimant/Counter Respondent, Conine is hereby not liable to Respondent/Counter Claimant, Outwater and therefore Outwater's Counterclaim against him is hereby dismissed.
6. Claimant's request for attorney's fees is hereby dismissed in all respects.
7. Respondent, Outwater's request for attorney's fees is hereby dismissed in all respects.
8. Respondent, Nash's request for attorney's fees is hereby dismissed in all respects.
9. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars (\$750 x 2 sessions). Claimant is hereby assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such forum fees.

10. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

George Felos, Esq.
Mr. Theodore F. Chive
Mr. A. Grant Bohl

Dated: August 25, 1989