

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	:
	:
Fred H. Brady	:
	:
Claimant	:
	:
	:
vs.	:
	:
Diversified Equities Corp.	:
and	:
Arthur Goldstein	:
	:
Respondents	:
	:

AWARD
#87-02107

Case Summary

Claimant, Fred H. Brady ("Claimant") alleged that Respondents, Diversified Equities Corp. and Arthur Goldstein ("Respondents") failed to follow the NASD's "Suitability Rule" in handling Claimant's account. Claimant alleged that Respondents defrauded Claimant through their telephonic misrepresentation to Claimant regarding the value of Enncite Control Stock ("Enncite") and through their subsequent sale of Enncite to Claimant.

Respondent Diversified maintained that it acted in good faith and did not directly or indirectly induce the acts constituting alleged violations and denied any wrongdoing or liability alleged by Claimant. Respondent Goldstein denied that he recommended Enncite and he maintained that Enncite was suitable for the Claimant and that Claimant knew that Enncite was a high risk security. Respondent Goldstein maintained he informed Claimant that Enncite was a high risk security. Respondent Goldstein maintained that there was no fraud.

Respondent Goldstein counterclaimed against Claimant for sums due and owing to Goldstein but not paid by Respondent Diversified because of Claimant's complaint. Respondent Goldstein asserted a cross claim against Diversified for indemnification in the event that an award should be found against Goldstein. Goldstein also asserted a cross claim against Diversified for wrongfully withholding monies due and owing to him for Diversified's unlawfully withholding Goldstein's books and records.

Claimant denied all allegations contained in Goldstein's cross claim. Diversified asserted a cross claim against Goldstein for indemnification. Diversified denied any liability to Goldstein and maintained if an award is given to Claimant against Goldstein, that Diversified should not have to indemnify Goldstein since any wrongdoing committed by Goldstein was without Diversified's knowledge and was outside the scope of Goldstein's employment.

Relief Requested

Claimant requested to have the sale of Enncite rescinded and to be placed in the position he would have been in if Diversified had not engaged in its wrongful action. Claimant specifically seeks damages as follows:

1. Refund of investment in Enncite	\$60,031.25
2. Interest on bank loan for 1986, for loan taken out to purchase Enncite	534.46
3. Loss of dividends on stock transferred to Diversified for trade for Enncite stock and stock sold to purchase Enncite	1,106.00
4. Punitive Damages	30,000.00
5. Attorney Fees	4,000.00
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TOTAL	\$95,671.71

Respondent Diversified requested that Claimant's claim be dismissed in its entirety and that Claimant be assessed costs and disbursements of this action. Respondent Diversified requested that Respondent Goldstein's counterclaim be dismissed and that if the Claimant recovers an award against Diversified; that the panel award Diversified on its cross claim against Goldstein for the full amount of any such award suffered by Diversified, together with the costs and disbursements of the action.

Respondent Goldstein requested that Claimant's claim be dismissed, that, on his counterclaim the requested damages in the amount of \$15,000.00 be assessed against the Claimant. Respondent Goldstein also requested Diversified be ordered to return all books and records to him and requested that the panel award him the sum of \$18,000 on his cross claim asserted against Respondent Diversified.

Award

On June 6, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant on October 16, 1987 and by the Respondent Diversified Equities, Corp. on March 10, 1988. Respondent Arthur Goldstein did not execute a submission agreement, however, he did submit an answer, cross claim and counterclaim and was represented by Counsel at the hearing. Therefore, the presiding arbitrators, pursuant to Section 12(a) of the Code of Arbitration Procedure, exercised their jurisdiction over Respondent Goldstein. The hearing was held in Cleveland, Ohio and consisted of 2 sessions. 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. That the Claimant's claim is dismissed in its entirety.

2. That Respondent Goldstein's cross claim and counterclaim is denied in its entirety.
3. That Respondent Diversified's cross claim is denied.
4. Claimant's request for punitive damages is denied.
5. The parties shall each bear their respective costs including attorneys' fees.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited by the claimant.
7. The parties are equally assessed forum fees for the June 6, 1990 arbitration hearing so that the Claimant is assessed forum fees in the amount of \$500.00. However, Claimant is entitled to apply his filing fee to this amount so that no forum fees are due from the Claimant. Respondents are jointly and severally assessed forum fees in the amount of \$500.00 payable to the NASD, through its staff counsel in accordance with Section 43 the Code of Arbitration Procedure.

CONCURRING ARBITRATORS

Robert C. Devlin