

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between

ROBERT E. AUSBURY

Claimant

v.

EDWARD D. JONES & CO.

Respondent

NASD NO. 88-00051

CASE SUMMARY

In a claim filed with the NASD on or about January 7, 1988, Claimant Robert E. Ausbury, ("Claimant") alleged that Respondents Edward D. Jones & Co., Gary Aleff and Mark Burnside ("Respondents") misrepresented to Claimant that his purchases of certain Oil and Gas and Coal limited partnerships were not highly speculative and illiquid. Respondent's conduct was allegedly violative of the Federal and State Securities Laws, Article 3 of the NASD Rules of Fair Practice, and the rules of the New York Stock Exchange. Respondent Jones was also alleged to have failed to properly supervise the activity of Respondents Aleff & Burnside. Respondents were also alleged to have breached the contract entered between them and Claimant, breached their fiduciary duties to Claimant and violated the Federal RICO Statute.

Respondents denied the allegations set forth in the claim and asserted that the investments were affected by the downturn in the price of petroleum products and not due to any actions of Respondents.

2-8-90

PROCEDURAL SUMMARY

Claimant initially filed his claim with the NASD pro se. Respondents submitted their answer to the claim and included a motion to dismiss the claim on the basis of Section 15 of the NASD Code of Arbitration Procedure which sets forth a six (6) year eligibility requirement in order to submit a dispute to arbitration. Additionally, Respondents alleged that the statutes of limitation under the state and federal securities acts acted as a time bar to the Claimant's claims. Respondents also alleged that Claimant's claim as to the NRM partnership purchases was barred by a class action adjudication in David Thompson, et al. v. Edward D. Jones & Co. et al., No. LR-C-87-247 in which a court order settling the class action was entered on October 20, 1988. The court's order enjoined certain class members, except those who opted out of the class from asserting claims against Respondents on NRM 1984 and 1985 oil and gas limited partnerships.

Thereafter, Claimant retained counsel who sought leave to file an appearance and file an amended claim shortly before the initially scheduled hearing date in this matter of November 19, 1989. The arbitration panel allowed the amendment to the claim, granted an adjournment of the scheduled hearing date and allowed Respondents to file an amended answer. Additionally, the arbitration panel ordered claimant to file a written reply to the motion to dismiss and set a new hearing date of December 18, 1989.

OTHER ISSUES

At the hearing on December 18, 1989, the panel instructed the parties to include in opening statement any oral argument regarding the motion to dismiss and indicated that the arbitrators would consider this motion when taking up the merits of the claim.

The parties stipulated during opening Statement that Claimant was not pursuing any claim for the NRM limited partnerships because of an Illinois Secretary of State Securities Department settlement. The panel therefore did not consider this claim or any evidence on this partnership insofar as the possible award of any damages to Claimant.

RELIEF REQUESTED

Claimant requested damages of \$40,000.00 or rescission of the investments, interest at the legal rate, treble damages and attorney's fees under RICO, forum fees, costs and any other relief as is just and proper. Respondents requested that all claims be dismissed with prejudice.

At the hearing, the Claimant reduced the amount of damages claimed to \$25,000.00 because he was not pursuing any claim on the NRM limited partnership.

AWARD

On Monday, December 18, 1989 in Chicago, Illinois during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 31, 1987 by Claimant Robert E. Ausbury, on March 29, 1988 by Cynthia A. Doria, Assistant General Counsel on behalf of Respondent Edward D. Jones & Co. Respondents Gary Aleff and Mark Burnside did not execute a submission to arbitration. They did answer the claim and appear at the hearing. Additionally, they are obligated to arbitrate this dispute pursuant to Section 12 of the NASD Code of Arbitration Procedure and they are therefore bound by the panel's decision on all matters submitted.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim and the amended claim of Robert Ausbury shall be and are each hereby dismissed in their entirety on their merits. Accordingly, it was not necessary for the panel to rule on Respondent's motion to dismiss;
2. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter;
3. Pursuant to Section 30(b) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$100.00 fee deposited with the NASD by Claimant to secure a postponement of a previously scheduled hearing date in this matter; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$400.00 filing fee previously deposited with the NASD by the Claimant Robert Ausbury and Edward D. Jones & Co., Inc. is assessed and shall pay to the NASD as forum fees the sum of \$400.00.

BY THE PANEL

Dated: January 18, 1990

S/SArthur Medow, Esq.
Presiding Chair

Dated: January 19, 1990

S/SWilliam E. Snyder, Esq.

Dated: February 5, 1990

S/SBradley Rosen, Esq.