

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
EDWARD J. GIBNEY AND GLEN W. GIBNEY,)
Claimants,)
vs.) Case #88-00703
Award
RLR SECURITIES GROUP, INC., ALAN BESHANY,)
DINO BARONE and EDWARD A. VINER CO., INC.,)
n/k/a FAHNESTOCK & CO., INC.)
Respondents.)

Heard before the member of the Arbitration Panel:

A. William Cohen, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on March 1, 1988. The hearing was conducted in Tampa, Florida on September 18, 1989 with a total of 1 session.

Claimants Edward and Glen Gibney ("the Gibneys") alleged that Respondents RLR Securities Group Inc. ("RLR"), Alan Beshany ("Beshany"), Dino Barone ("Barone") and Edward A. Viner and Co., Inc. n/k/a Fahnestock and Co., Inc. ("Fahnestock") were liable for placing Claimants in an unsuitable investment. Specifically, Claimants alleged that Respondents placed them in speculative stock contrary to Claimant's stated investment objectives.

Respondent Beshany alleged that: Claimants had told him they wished to invest some of their money in speculative investments; he had no knowledge as to the source of Claimants' funds; did not execute the trades complained of; received no commissions from the trades; ninety percent of Claimants' monies were invested in income yielding stocks; the purchases complained of were made pursuant to Claimants' request and Claimants ratified the transactions. Additionally, Beshany alleged the affirmative defenses of: failure to state a claim; laches; waiver; estoppel; and good faith.

Respondent Barone alleged that he was not employed with RLR at the time the complained of transactions occurred and that his after-the-fact involvement amounted to servicing the account with quotes and general information.

Respondent Fahnestock alleged that, pursuant to the clearing agreement, it was indemnified and held harmless by RLR and, therefore, RLR should be responsible for any liability that may be imposed on Fahnestock. Fahnestock cross claimed against RLR reasserting these allegations.

Respondent RLR was removed as a party to this action pursuant to the notice of filing bankruptcy.

RELIEF REQUESTED

Claimants requested damages in the amount of Nine Thousand Two Hundred Fifty and 00/100 (\$9,250.00) Dollars plus interest. Respondents requested dismissal of the claim and costs. Respondent Beshany requested attorney's fees and Respondent Fahnestock asserted a cross claim against RLR. Respondent Beshany dismissal of that claim.

AWARD

On September 18, 1989, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on February 26, 1988, and by Respondents Beshany on May 6, 1988; Barone on April 22, 1988; Fahnestock on May 8, 1988 and not signed by RLR as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"). Respondent RLR, being a member firm at the time this controversy arose and having since then filed for bankruptcy, as evidenced by the Notice of Filing Bankruptcy, was, therefore, removed from this action. Respondent Beshany was not present at the hearing despite having asked for an adjournment which was denied. Beshany was provided an opportunity to review the tape recording of the hearing and to respond in writing. Respondent Fahnestock was also not present at the hearing, but testified by telephone and was provided an opportunity to review the tape recording of the hearing and to respond in writing. The arbitrator having considered the pleadings, the testimony, and the evidence presented at the hearing, as well as the submissions filed by Respondents Beshany and Fahnestock has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Beshany is hereby liable and shall pay to Claimants the amount of Nine Thousand Two Hundred Fifty and 00/100 (\$9,250.00) Dollars.
2. Respondent Beshany's request for attorney's fees is hereby dismissed in all respects.
3. Respondent Barone is not liable and, therefore, all claims against him are hereby dismissed.
4. Respondent Fahnestock is not liable and therefore all claims against it are hereby dismissed.

5. Pursuant to Section 43 of the Code of Arbitration Procedure, Claimants are hereby assessed forum fees in the amount of Two Hundred and 00/100 (\$200.00) Dollars. The NASD, Inc. shall retain the Two Hundred and 00/100 (\$200.00) Dollar filing fee previously deposited by the Claimants in full satisfaction of 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

Pursuant to the Notice of Filing Bankruptcy, RLR was removed as a respondent in this action and all claims against it were stayed.

ARBITRATOR CONCURRING


A. William Cohen, Esq.

DATED: NOVEMBER 27, 1989