

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

THERESA KASIANOV

Claimant(s)

and

JOHN G. KINNARD & CO., INC. AND
PHILLIP G. SMITH

Respondent(s)

CASE NO. 88-00887

CASE SUMMARY

In a claim filed on or about March 17, 1988 the Claimant alleged that the Respondent Smith recommended the purchase of common stocks which were unsuitable for the Claimant. The Claimant stated that the Respondents failed to execute sell orders and failed to explain the risks associated with a margin account. Claimant alleged that the actions of the Respondents constituted a violation of the NASD suitability rules, a violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, negligence and a breach of fiduciary duty. The claim was amended on January 31, 1989 to include an action under the RICO Act and alleged that the acts of Mr. Smith constituted mail fraud and/or wire fraud.

The Respondents stated that the account was handled in accordance with the Claimants' financial objectives and desires. Respondents alleged that the Claimant understood the margin account and further alleged that they never refused to follow any instructions to sell any holdings. In response to the amendment, Respondents stated that the Claimant failed to state a valid cause of action under the RICO Act.

RELIEF REQUESTED

The Claim originally asked for \$20,000 in losses plus costs and attorneys' fees. Pursuant to the amendment, the Claimant asked for treble damages in the amount of \$60,000. The Respondents asked that the claims and amendments be denied in their entirety.

AWARD

On April 21 and May 24, 1989 in Minneapolis, Minnesota, in a hearing lasting 4 sessions the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 7, 1988 by the Claimant Theresa P. Kasianov, on June 8, 1988 by Gerald Gifford on behalf of Respondent John G. Kinnard & Co., Inc. and on June 13, 1988 by Respondent Phillip G. Smith.

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. Respondent John G. Kinnard & Co., Inc. and Phillip G. Smith are hereby jointly and severally liable for and shall pay to the Claimant the sum of Eleven Thousand One Hundred Eighty One Dollars and Seventy Seven cents (\$11,181.77);

2. RICO damages are none;

3. Each party shall bear its own costs and expenses, including attorneys fees; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, Respondents John G. Kinnard & Co., Inc. and Phillip G. Smith are assessed \$1,600 jointly and severally as forum fees which amounts are to be made payable to the NASD. The Claimants filing fee was originally waived and the Claimant will not be charged additional forum fees.

By the Panel

Dated: 10-16-89 /S/Douglas D. McFarland, Esq.
Presiding Chair

Dated: 10-18-89 /S/Katherine M. Merrill

Dated: 10-23-89 /S/Thomas E. Moore

Date Served: 10-26-89