

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN :
:
Daniel L. Miley :
:
: Case #88-00911
Claimant :
:
AWARD
:
vs. :
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CDS Investments, Inc. :
:
K.A. Knapp & Co., Inc. :
:
Larry L. Franke :
:
:
Respondents :

CASE SUMMARY

Claimant Daniel L. Miley ("Miley") alleged that Respondent Larry L. Franke ("Franke"), an employee of Respondent K.A. Knapp & Co., Inc. ("Knapp"), made false representations as to the quality and value of an investment, specifically Pressel & Co., Inc. ("Pressel"). Claimant further alleged that the Respondents did not properly notify him that shares of Pressel had been purchased in his account, and that Respondents did not properly notify him that his account would be liquidated.

Respondent Knapp contended that the purchase of Pressel was suitable for the Claimant, and that no false representations were made. Knapp further contended that the Claimant authorized and accepted the purchase of Pressel, and that the Claimant's account was properly liquidated under Regulation T when the Claimant failed to timely pay for his purchase. Respondent Knapp also asserted a counterclaim in which it alleged the Claimant has made an intentional false and spurious claim against Knapp for the sole purpose of financial gain by fraudulent means. Claimant denied these allegations, and again contended that Respondents failed to properly notify the Claimant of trades entered in his account. Respondent Franke contended he made no false representations concerning Pressel, and that he was not informed of Claimant's new address until after the complained of transactions. Respondent Franke further contended that he immediately advised the Claimant that the Pressel stock was purchased in his account, and that he was not aware of the liquidation in the Claimant's account prior to the securities being sold. Franke asserted a cross-claim against Respondents Knapp and C.D.S Investments, Inc. for any amount that Franke maybe held liable to the Claimant alleging that such liability would have resulted entirely from such Respondents' conduct.

Respondent Knapp did not attend the hearing. Respondent C.D.S. Investment, Inc. did not answer nor appear in these proceedings.

RELIEF REQUESTED

Claimant Daniel L. Miley requested actual damages of \$2,682.50, plus costs and attorney's fees. Respondent K.A. Knapp & Co., Inc. requested dismissal of the Statement of Claim in its entirety, plus, pursuant to its counterclaim, actual damages of \$2,600.00. Claimant requested dismissal of the counterclaim. Respondent Larry L. Franke requested dismissal of all claims made against him or, in the alternative, that he be awarded an amount equal to any sum he is found liable to the Claimant pursuant to his cross-claims against Respondents C.D.S. Investments, Inc. and K.A. Knapp & Co., Inc.

AWARD

On July 25, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Daniel L. Miley on February 6, 1988, by Respondent K.A. Knapp & Co., Inc. on May 20, 1988, by Respondent Larry L. Franke on June 17, 1988, and not by Respondent C.D.S. Investments, Inc. The initial claim was filed on March 21, 1988. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. in Philadelphia, PA and consisted of one (1) hearing session. 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. It was determined by the arbitrator that since C.D.S. Investments, Inc. was not a member of the NASD, Inc. and did not voluntarily submit to these proceedings, that any and all claims and cross-claims would be dismissed without prejudice to any of the parties because proper jurisdiction over C.D.S. Investments, Inc. was not established.
2. At the hearing, the arbitrator was informed that Respondent K.A. Knapp & Co., Inc. was currently involved in bankruptcy proceedings under Chapter 7 of the Bankruptcy Code. Therefore, the arbitrator determined that pursuant to the automatic stay provisions of Bankruptcy Code, all claims and cross-claims against K.A. Knapp & Co., Inc. are stayed without prejudice to the parties.
3. Respondent Larry L. Franke be and hereby is liable and shall pay to the Claimant Daniel L. Miley the sum of Two Thousand Dollars and No Cents (\$2,000.00), inclusive of interest.
4. The counterclaim of Respondent K.A. Knapp be and hereby is dismissed in its entirety.
5. The parties each shall bear their respective costs including attorney's fees.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 filing

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fee previously deposited by the Claimant as costs of the one (1) hearing session conducted in this matter.

CONCURRING ARBITRATOR



DONALD L. BRUTON

DATED: August 1, 1990