

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between
ELAINE STIARWALT
v.
GROUP NINE SECURITIES and
MIKE HESSE

Claimant

Respondents

NASD No. 88-01470

CASE SUMMARY

Elaine Stiarwalt ("Claimant") alleges that Group Nine Securities, Inc. ("Respondent Nine") and Mike Hesse ("Respondent Hesse") (sometimes referred to collectively as "Respondents") made purchases in her IRA and in her regular account that were not suitable for investment objectives as stated. Further, Claimant alleges churning in the regular account and alleges that trading in options in the IRA account seems "ridiculous".

Respondent Nine and Respondent Hesse generally deny the allegations set forth in the Statement of Claim. Specifically, Respondents state that Claimant was aware of the risks associated with the trading of options. Further, Respondents allege that Claimant executed a trading authorization providing Respondent Hesse with discretion to trade for Claimant. Respondents allege that Claimant is an experienced investor and has traded stocks in other securities accounts with other firms. Affirmatively, Respondents allege that Claimant is barred for recovery based on the doctrines of estoppel, ratification and waiver. Respondent Nine asserts a counterclaim against Claimant for a debit balance which was the result of trading by Claimant.

RELIEF REQUESTED

Claimant requests damages in the amount of \$46,000.00.

Respondents request that the Statement of Claim is dismissed. As an asserted counterclaim, the Respondents request a debit balance in the amount of \$3,500.00.

PROCEDURAL SUMMARY

After no notice to Group Nine being established by the NASD and Mr. Hesse indicating that he was not prepared, Mr. Hesse requested an adjournment. The Panel overruled the request. After discussing Claimant's alternatives, the Claimant determined to go forward with the hearing. Respondent Hesse requested advise of counsel and that motion was overruled by the Panel based on Respondent's adequate notice of the hearing and his ability to subpoena witnesses.

Further, an appearance by Mr. David Chiodo, President Group Nine Securities, occurred at approximately 2:00 p.m. Mr. Hesse called Mr. Chiodo as a witness. The panel informed Mr. Chiodo of his rights to present evidence, including an opening statement and to call witnesses. Mr. Chiodo then stated that he wished the arbitrators to rely on the response filed by Group Nine Securities and asked to be excused.

AWARD

On April 3, 1990, in Dallas, Texas in a hearing lasting 2 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on May 16, 1988 by Claimant Elaine Stiarwalt, on August 4, 1988 by David P. Chiodo on behalf of Respondent Group Nine Securities Corp. and on August 4, 1988 by Respondent Mike Hesse.

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. Group Nine Securities is liable for and shall pay as damages to Elaine Stiarwalt the amount of \$28,500 (Twenty-eight Thousand Five Hundred and no/100);

2. Group Nine Securities and Mike Hesse are jointly and severally liable to Elaine Stiarwalt for damages in the amount of \$17,500 (Seventeen Thousand Five Hundred and no/100);

3. Group Nine Securities and Mike Hesse are jointly and severally liable for and shall pay to the NASD the filing fee in the matter in the amount of \$400.00 (Four Hundred and no/100);

4. Elaine Stiarwalt requested a postponement after a panel was composed. Therefore, Elaine Stiarwalt shall pay to the NASD a postponement fee in the amount of \$100.00 (One Hundred and no/100);

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees the \$400.00 (Four Hundred and no/100) filing fee previously deposited with the NASD by the Claimant Elaine Stiarwalt.

BY THE PANEL

Dated: April 3, 1990

/S/Arch B. Gilbert, Esq.
Presiding Chair

Dated: April 3, 1990

/S/A. James Lynn, CPA

Dated: April 3, 1990

/S/R. Theodore Moock, Jr.