

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
 )  
JOEL S. GREY, )  
 ) Claimant, )  
 ) Case #88-02405  
vs. ) Award  
 )  
TUCKER ANTHONY & R. L. DAY, INC. and )  
E. JEROME DEUTSCHER, )  
 ) Respondents. )  
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Heard before the members of the Arbitration Panel:

Mark Perry, Esq.  
Mr. Howard Biel  
Mr. Richard D. Toplin

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 28, 1988. The hearing was conducted in Fort Lauderdale, Florida with a total of two sessions.

Claimant, Joel S. Grey ("Grey"), alleged that Respondent, E. Jerome Deutscher ("Deutscher"), a close personal friend, fraudulently induced him to invest monies which Deutscher would manage in a discretionary account; that Deutscher invested the funds in securities which were unsuitable to meet Claimant's expressed investment objectives; and failed to enter sell orders and misrepresented that he had done so. Claimant alleged that Deutscher's actions constituted fraud, breach of fiduciary duty, and negligence; resulted in the loss of his investment and a penalty tax resulting from Claimant being forced to take a premature distribution from his pension plan. Claimant alleged that Respondent, Tucker Anthony & R. L. Day, Inc. ("TA"), is liable for Deutscher's acts by virtue of respondeat superior and that TA breached its securities account agreement with Claimant.

Respondents deny all allegations of wrongdoing; deny knowledge that Claimant's investment goals were short term, safe investments; and that Claimant placed the alleged sell order. Respondents maintain that Claimant's losses were the result of a severe market decline; that Claimant was always aware of the trading and value of his account; and that Claimant's claims are barred by ratification, waiver and estoppel.

RELIEF REQUESTED

Claimant requests damages in the amount of \$22,625.00 against Respondents, jointly and severally; plus commissions, interest, costs, attorney's fees, and incidental damages of \$3,000.00. Respondents request dismissal of claims, costs, attorney's fees and other relief.

#### AWARD

On June 27, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 28, 1988, and by Respondents, TA, on September 20, 1988, and Deutscher on May 19, 1989. 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD, Inc.
2. Respondents, TA and Deutscher, shall be and hereby are liable, jointly and severally, and shall pay to the Claimant the amount of Four Thousand Six Hundred Twenty Five and 00/100 (\$4,625.00) Dollars damages, plus interest at the legal rate of 12% per annum from October 1987 to date, of Nine Hundred Twenty Five and 00/100 (\$925.00) Dollars, for a total of Five Thousand Five Hundred Fifty and 00/100 (\$5,550.00) Dollars.
3. Claimant's and Respondents' request for attorney's fees are hereby denied in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel assesses forum fees in the amount Eight Hundred and 00/100 (\$800.00) Dollars (two sessions x \$400.00). Claimant shall be and hereby is assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars, for which the NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by Claimant in full satisfaction thereof. The Respondents, TA and Deutscher, shall be and hereby are assessed forum fees, jointly and severally, in the amount of Four Hundred and 00/100 (\$400.00) Dollars payable to the NASD, Inc.
5. The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

Mark Perry, Esq., Howard Biel and Richard D. Toplin

Dated: July 3, 1989