

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Rex Emmett

Claimant

vs.

PaineWebber, Inc. and
Alan Lertzman

Respondents

AWARD

CASE NO. 88-02422

SUMMARY OF ISSUES

This claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on July 29, 1988, upon an order of the Superior Court of Santa Clara County, California, compelling arbitration on December 30, 1983.

Claimant alleged that Respondent Alan Lertzman fraudulently solicited Claimant's investment in the common stock of Rovac Corporation, misrepresented the financial condition and prospects of Rovac Corporation and the resulting impact on the value of Rovac shares, and that this investment of substantially all of Claimant's assets in this speculative stock, as well as the use of margin, was unsuitable for Claimant's financial status and objectives. Claimant further alleged Respondent PaineWebber, Inc. negligently failed to supervise account executive Lertzman.

At the hearing on April 19, 1990, Claimant withdrew his claim for negligent supervision against PaineWebber, Inc.

Respondents denied all allegations, and asserted that Claimant had sought out Mr. Lertzman with the specific intention of speculating in Rovac stock. Respondents also asserted that the investment in Rovac was suitable for Claimant based upon financial information provided by him. Respondents allege Claimant's losses were due solely to adverse market conditions and the failure of the Rovac Corporation to develop the technology it promised.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of \$43,490.02, general and special damages, punitive damages, or in the alternative, treble damages under RICO, and attorneys' fees. Claimant stipulated at the hearing that his damages for out-of-pocket losses were \$30,000.00.

Respondents requested dismissal of all claims and assessment of costs against Claimant.

DAMAGES AND RELIEF AWARDED

On April 19 and 20, 1990, the undersigned arbitrators heard the controversy between the parties pursuant to submissions to arbitration signed by Claimant on July 28, 1988, by PaineWebber, Inc. on October 18, 1988, and by Alan Lertzman on November 22, 1988. The hearing was held in San Francisco, California and lasted four sessions. 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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of Twenty-Eight Thousand, Eight Hundred Fifty Dollars and Zero Cents (\$28,850.00) plus interest in the amount of Fourteen Thousand, Four Hundred Twenty-Five Dollars and Zero Cents (\$14,425.00).

2. All claims for punitive damages and RICO damages are dismissed.

3. The parties shall each bear their respective costs including attorneys' fees.

4. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. Claimant is assessed an additional \$750.00, and Respondents are jointly and severally assessed \$1,500.00 in forum fees. All assessments of forum fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

Prior to the hearing on the merits, the panel heard oral argument and considered the parties' briefs on Respondents' Motion to Dismiss the arbitration pursuant to Cal. Civ. Proc. Code Sections 583.310 and 583.360 on the ground that Claimant failed to bring the matter to hearing within five years.

The panel denied the Motion to Dismiss and considered the merits of the claim given the announced policy of Cal. Civ. Proc. Code Section 583.130 that disposition on the merits is favored over a policy that requires

dismissal for failure to proceed with reasonable diligence in prosecution
of an action.

PRESIDING ARBITRATORS

DATE SERVED: 05/30/90

Armin Rosencranz

Armin Rosencranz
