

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
GEORGE & JEAN CUMMINS, TRUSTEES)
)
) Claimants)
) Case #88-02583
vs.) Award
)
)
FIRST JERSEY SECURITIES, INC.,)
)
ROBERT E. BRENNAN and)
)
JAMES MAKELY)
) Respondents.
)

Heard before the members of the Arbitration Panel:

Joseph L. Bernstein, Esq.
Ms. Virginia Rhyne
Mr. Douglas Delanoy Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 15, 1988. The hearing was conducted in Fort Lauderdale, Florida on October 18, 1989 with a total of 1 session.

Claimants George and Jean Cummins ("the Cummins'") alleged that Respondents First Jersey Securities, Inc. ("FJS"), Robert E. Brennan ("Brennan") and James Makely ("Makely") were liable for: placing Claimants in unsuitable securities; misrepresentation and omission of material fact; boiler room tactics; violations of Section 20 of the Exchange Act and of the Employee Retirement Income Security Act; refusal to sell; failure to deliver prospectuses and breach of fiduciary duty. Respondents alleged that Claimants: knew of and assumed the risks of investing in growth stocks; were suitable for the investments; were informed of all the risks; were informed that FJS was a market maker in each instance where FJS acted as such; made the final investment decision; did not purchase new issues through FJS and were bound by the Final Judgement and Order of Dismissal entered in the Class Action Suit In re: First Jersey Securities, Inc., Securities Litigation, M.D.L. No. 681 insofar as Claimants seek adjudication of claims relating to securities included within the settlement of that Class Action Suit.

RELIEF REQUESTED

Claimants requested damages in the amount of \$23,103.00 plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim.

AWARD

On October 18, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants George Cummins on January 20, 1988 and Jean Cummins on September 30, 1988, by Respondents FJS on November 30, 1988, Brennan on November 3, 1988 and Makely on October 24, 1988. 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. Based on the Final Judgement and Order of Dismissal entered in the Class Action Suit In re: First Jersey Securities, Inc., Securities Litigation, M.D.L. No. 681, respondents are not liable to the Claimants and, therefore, all claims against them are hereby dismissed insofar as Claimants seek adjudication of claims relating to securities included within the settlement of that Class Action Suit.
2. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Claimants forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimants with the NASD, Inc. in full satisfaction of such forum fees.
3. Claimants' request for attorney's fees is hereby dismissed in all respects.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Pursuant to the agreement of the parties, the Claimants' one remaining claim for damages, related to the purchase of Davage Oil, which was not covered by the Class Action Suit referenced above, was rolled over into NASD, Inc. Arbitration Case Number 88-00178, George J. Cummins v. First Jersey Securities, Inc., Robert E. Brennan and James Makely.

ARBITRATORS CONCURRING

Joseph L. Bernstein, Esq.
Ms. Virginia Rhyne
Mr. Douglas Delanoy Jr.

Dated: December 19, 1989