

N.A.S.D. AWARD

Arbitration

©

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Joel Peterzell)

Name of Respondent(s))

Charles Schwab & Company, Inc.)
Warren Way)
Walton Lee Schieman)

CASE #88-02868

Heard before the members of the Arbitration Panel:

James R. Kennedy, Jr., Esq.

Public

David A. Townsend, Esq.

Public

Jerrold Glass

Industry

REPRESENTATION

Claimant, Joel Peterzell ("Peterzell"), was represented by William L. Lyman, Esq. of William L. Lyman, P.A.

Respondents, Charles Schwab & Co., Inc. ("Schwab"), Warren Way ("Way"), and Walter Lee Schieman ("Schieman"), were represented by Burton W. Wiand, Esq. of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on September 13, 1988. Claimant alleged that Respondents were liable for: violating Section 10(b) and Rule 10b-5; Chapter 517 of the Florida Statutes; breach of contract; common law fraud; breach of fiduciary duty; negligence; civil theft; and violating the Florida and Federal RICO Act. Claimant alleged that Respondent, Way, induced Claimant into purchasing options which were not suitable investments in light of Claimant's investment objectives.

In a Statement of Answer filed with the NASD on May 2, 1989, Respondents denied liability and asserted affirmative defenses including: that Schwab relied on Claimant's representations as to his investment experience; assumption of risk; comparative negligence; estoppel; waiver; ratification; laches; failure to plead facts with sufficient particularity to allege fraud;

statute of limitations; failure to state a cause of action for breach of contract; failure to allege reliance; failure to state a cause of action for breach of fiduciary duty, for negligence, or for civil theft; there is no private right of action under the Florida RICO Act; failure to allege a pattern of criminal activity; and failure to state a cause of action under the Federal RICO Act.

Respondents alleged that: Schieman was not the manager for the branch where Claimant had his account; Way never held himself out as an expert in options; Claimant did not disclose his prior medical history to Respondents; Claimant represented to Respondents, that he was experienced and suitable for these investments; and Claimant was provided with a prospectus.

Respondent, Schwab, asserted a counterclaim against Claimant for attorney's fees.

RELIEF REQUESTED

Claimant requested damages in the amount of \$132,870.00 plus treble damages in the amount of \$398,610.00, plus costs, attorney's fees, interest, and other punitive damages.

Respondents requested dismissal of the claim and counterclaimed for attorney's fees.

AWARD

On May 14, 1990, November 12, 13 & 15, 1990 and April 3, 4 & 5, 1991, in Tampa, Florida, during a hearing lasting fourteen (14) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on September 5, 1989 and signed on April 19, 1989 by Richard S. Dangerfield on behalf of Respondent, Schwab, and by Respondents, Way on April 11, 1989 and Schieman on April 24, 1989.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondent, Way is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondent, Schwab, is found liable and shall pay to the Claimant the amount of \$39,500.
4. Claimant's requests for attorney's fees, costs, treble damages, punitive damages, and RICO damages are denied.

5. Claimant/Counter Respondent, Peterzell, is found not liable for attorney's fees and, therefore, the counterclaim against him is hereby dismissed.

FORUM FEES

6. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$14,000 (1 pre-hearing conference x \$1000 plus 13 sessions x \$1000 per session). Claimant is hereby assessed \$7,000 payable to the National Association of Securities Dealers, Inc. Respondent, Schwab, is hereby assessed \$7,000 payable to the National Association of Securities Dealers, Inc.

7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

8. Respondent, Schieman, was voluntarily dismissed with prejudice by the Claimant during the hearing.

9. The Panel has provided a Report of Arbitrators which, although attached hereto, is not a part of this Award.

Concurring Arbitrators' Signatures

/s/
James R. Kennedy, Jr., Esq.

/s/
Jerrold Glass

Dissenting Arbitrator's Signature

Arbitrator, Townsend, concurs with the findings that: Respondent, Way, is not liable; that Claimant's requests for attorney's fees, costs, treble damages, punitive damages and RICO damages are denied; that Claimant/Counter Respondent, Peterzell, is not liable for attorney's fees; that the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding; and, with the statements in OTHER ISSUES and otherwise dissents.

/s/
David A. Townsend, Esq.

Date of Decision: June 17, 1991