

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

CHARLES DILLON

Claimant

and

LAIDLAW, ADAMS & PECK, INC. a/k/a KUHNS
BROTHERS & LAIDLAW, INC. AND IRWIN M.
GROSS

Respondent(s)

CASE NO. 88-02881

CASE SUMMARY

In a claim filed with the NASD on September 13, 1988, Claimant Charles Dillon ("Dillon") alleged that Respondent Irwin M. Gross ("Gross"), while a registered representative of Respondent Laidlaw Adams & Peck, Inc. a/k/a Kuhns Brothers & Laidlaw, Inc. ("Kuhns Brothers"), omitted to state material facts in connection with soliciting Dillon to sell 5000 shares of Izuzu stock and purchase 2000 shares of Computone stock. The Respondent's actions were alleged to have been violative of Section 12(b) of the Securities Act of 1933, Section 10(b)5 of the Securities Exchange Act of 1934, Rule 10(b)5, Section 11-51-125 of the Colorado Securities Act of 1981, negligence and breach of fiduciary duty.

Gross generally denied all allegations of the Claim and specifically denied that he made any misrepresentations or omissions of material fact and alleged the affirmative defense of ratification. Gross also asserted a cross claim against Kuhns Brothers for indemnification. Kuhns Brothers did not answer the claim or the cross-claim.

RELIEF REQUESTED

Dillon requested an award equal to the difference between the market value of 5000 shares of Izuzu stock less the current market value of the Computone stock he holds, plus attorneys' fees and costs. Gross requested dismissal of the claim in its entirety or in the event an award was entered against him by the panel, that Gross be indemnified to the extent of any such award by Kuhns Brothers.

OTHER ISSUES

In the absence of Respondent Kuhns Brothers or any representative of Kuhns Brothers, the panel determined to proceed with the hearing after being informed of the NASD's attempts to notify Kuhns Brothers of the hearing date and existence of Dillon's claim pursuant to Section 25 and 26 of the NASD Code of Arbitration Procedure (NASD Code). Pursuant to the panel's authority set forth in Section 29 of the NASD Code, Kuhns Brothers will be bound by the panel's final determination on all issues submitted.

Gross requested an amendment to his answer at the hearing. Prior to opening statement and without objection by Dillon's counsel, Gross requested that his prayer for relief include a claim for attorney's fees and costs in the event the claim was dismissed. The panel granted the amendment pursuant to its authority set forth in Section 39(b) of the NASD Code.

AWARD

On Friday, August 11, 1989 in Denver, Colorado during a hearing lasting one session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 3, 1988 by Claimant Charles M. Dillon and on April 24, 1989 by Respondent Irwin M. Gross. Respondent Kuhns Brothers did not execute a submission to arbitration, answer the claim, or appear at the hearing. Kuhns Brothers is required to submit to arbitration at the insistence of a public customer pursuant to Section 12 of the NASD Code. Kuhns Brothers is therefore bound by the panel's final determination on all issues submitted.

The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the parties' post-hearing submissions, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim asserted by Dillon against Kuhns Brothers and Gross shall be and is hereby dismissed in its entirety;
2. The cross-claim asserted against Kuhns Brothers by Gross shall be and is hereby dismissed in its entirety;
3. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$400.00 filing fee previously deposited with the NASD by Dillon and no forum fees are assessed against any party to this proceeding.

Panel Members Concurring

Dated: 9-25-89 /S/ Reid A. Godbolt, Esq.
Presiding Chair

Dated: 9-27-89 /S/ William M. Pendleton

Panel Member Dissenting

Dated: 9-26-89 /S/ William J. Klein

Date Served: 10-11-89