

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Howard J. Finn

Claimant

vs.

CASE NO. 88-03284

Pacific Securities, Inc.,
Robert C. Brown & Co., Inc.,
Philip Smith,
Robert C. Brown

Respondents

SUMMARY OF ISSUES

This case was filed on October 24, 1988. Claimant alleged Respondents churned his account, fraudulently invested his funds in unsuitable common stocks, made unauthorized transactions, breached their fiduciary duty to Claimant, failed to supervise Respondent Smith, and failed to heed Claimant's instructions to liquidate his account in May, 1987. Respondents asserted that they invested Claimant's funds in stocks that specifically suited the investment program Claimant wanted to follow, that is, a strategy of aggressive investment designed for a wealthy, sophisticated investor who held a series 7 license. Respondents denied they were requested to liquidate Claimant's account in May, 1987.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages in the amount of \$819,428.53, or in the alternative, \$762,965.60, plus exemplary and punitive damages in an amount to be determined at hearing, costs and attorneys' fees. Respondents requested the dismissal of all claims brought by Claimant and an award of costs and attorneys' fees.

DAMAGES AND RELIEF AWARDED

On November 15 and 16, 1989 in San Francisco, California, the undersigned arbitrators heard the controversy in six (6) sessions between the parties as set forth in submissions to arbitration signed by Claimant on October 17, 1988, and by all Respondents on January 27, 1989. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, 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, damages in the amount of \$108,160.00, on his claims for breach of fiduciary duty and failure to supervise.

2. All other claims are dismissed, including the claims for exemplary and punitive damages.

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

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant. Further, Respondents are assessed, jointly and severally, forum fees in the amount of \$5,000.00, payable to the NASD through its representative.

OTHER ISSUES

With respect to the composition of this panel of arbitrators, the panel confirms that under NASD rules the parties in this action were never entitled to a panel of more than three arbitrators, and further, cases brought by a public customer require a panel composed of a majority of public members.

DATE SERVED: 12/20/89


Neill Edward Hannon, Esq., Chair

Ferdinand Schoch

Rudy Thorwirth

2. All other claims are dismissed, including the claims for exemplary and punitive damages.

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

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant. Further, Respondents are assessed, jointly and severally, forum fees in the amount of \$5,000.00, payable to the NASD through its representative.

OTHER ISSUES

With respect to the composition of this panel of arbitrators, the panel confirms that under NASD rules the parties in this action were never entitled to a panel of more than three arbitrators, and further, cases brought by a public customer require a panel composed of a majority of public members.

DATE SERVED: 12/20/85

Neill Hannon

C. Ferdinand Schoch
Ferdinand Schoch

Rudy Thorwirth

2. All other claims are dismissed, including the claims for exemplary and punitive damages.

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

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant. Further, Respondents are assessed, jointly and severally, forum fees in the amount of \$5,000.00, payable to the NASD through its representative.

OTHER ISSUES

With respect to the composition of this panel of arbitrators, the panel confirms that under NASD rules the parties in this action were never entitled to a panel of more than three arbitrators, and further, cases brought by a public customer require a panel composed of a majority of public members.

DATE SERVED: 12/20/89



Rudy Thorwirth