

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

FRED FRALEY

Claimant(s)

and

THOMSON MCKINNON SECURITIES, INC.
AND BROOKS MARTIN

Respondents

CASE NO. 88-03417

CASE SUMMARY

Fred Fraley ("Claimant") alleged that Thomson-McKinnon Securities and its registered representative Brooks Martin (Thomson-McKinnon and Martin are collectively referred to herein as "Respondents"):

- 1) Misrepresented the risks of the trading that occurred in his account;
- 2) Churned his account;
- 3) Failed to provide him with the proper guidance; and
- 4) That he was not suitable for the type of trading engaged in the account.

Respondents denied all of the Claims of the Claimant and any such claims are barred by affirmative defenses which include but are not limited to ratification, assumption of the risk, estoppel, failure to mitigate, Claimant's negligent actions. Respondent also claimed that the three elements of control, excessive trading, any scienter were also lacking.

RELIEF REQUESTED

Claimant requested damages in the amount of \$30,292.54. Respondent requested that all of the claims of the Claimant be dismissed and that the forum fees be assessed against the Claimant.

AWARD

The Claimant filed his claim against the Respondents with the NASD on October 31, 1988. On October 19, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 24, 1988 by Claimant, on January 13, 1989 by Robert Beller on behalf of Respondent Thomson McKinnon Securities, Inc. The hearing was held in one session in Kansas City, Missouri.

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

1. The claims of the Claimant asserted against Thomson-McKinnon Securities and Brooks Martin are dismissed in their entirety;

2. The parties shall each bear their own costs and expenses including any attorney's fees incurred in this matter;

3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Fred Fraley.

By the Panel

Dated: 11-2-89 /S/ Bernard D. Craig, Jr. Esq.
Presiding Chair

Dated: 11-3-89 /S/ Alan C. Fite

Dated: 11-3-89 /S/ Peter C. Barnes

Date Served: 11-7-89