

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
GLYNDA B. ELLIS,)
) Claimant,)
) Case #88-03619
vs.) Award
)
RAYMOND JAMES & ASSOCIATES, INC. and)
)
BARRETT WOODSMALL,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Thomas Fotopulos, Esq.
Mr. James F. Turner III
Mr. Arthur De Stefano

CASE SUMMARY

This claim was filed with the NASD, Inc. on November 21, 1988. The hearing was conducted in Tampa, Florida on December 13, 1989 with a total of two (2) sessions.

Claimant Glynda Ellis ("Ellis") alleged that Respondents Raymond James & Associates, Inc. ("Raymond James") and Barrett Woodsmall ("Woodsmall") were liable for monies entrusted to Woodsmall which he converted to his own use. Respondent Raymond James alleged that: it did not confer actual authority on Woodsmall to borrow funds from it's clients; the monies entrusted to Woodsmall were actually a personal loan; Woodsmall did not have apparent authority to borrow funds from clients on behalf of Raymond James; Raymond James did not ratify the loan; the interest rate set forth in the promissory note is usurious; the arbitrators do not have jurisdiction under Florida Law to award attorney's fees and a claim for punitive damages is unavailable in an action based on contract. Respondent Woodsmall failed to file an Answer.

RELIEF REQUESTED

Claimant requested damages in the amount of \$21,200.00 plus interest, punitive damages, attorney's fees and other costs. Respondent Woodsmall failed to file an answer and Respondent Raymond James requested dismissal of the claim.

AWARD

On December 13, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 28, 1988, and by Respondent Raymond James on January 17, 1989 and not signed by Woodsmall as required pursuant to Section 12(a) of the NASD, Inc. Code of Arbitration Procedure ("Code"). Respondent Woodsmall being a person associated with an NASD member firm, Raymond James, during the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing, and Respondent Woodsmall neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding his knowledge of this arbitration as evidenced in Arbitrator's Exhibit #2(a)-2(e), this arbitration panel has determined 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 may 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, Inc.
2. Jurisdiction exists by virtue of the form U-4 signed by Woodsmall and pursuant to Section 12 of the Code.
3. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondent Woodsmall, the reasons will again be set forth here. The NASD, Inc. has made every attempt to locate and serve Woodsmall with Notice of this hearing as demonstrated by the following record evidence:
 - a). December 15, 1988, Statement of Claim sent by certified mail to Woodsmall at 301b 6060 Pelican Bay, Naples, Florida 33963 (returned, marked forwarding time expired; evidenced by Arbitrator's Exhibit #2(a)).
 - b). March 28, 1989, Letter indicating that the pleadings stage is complete and that the situs would be Tampa, Florida was sent by regular mail to Woodsmall at the Naples, Florida address (returned, marked moved, not forwardable; evidenced by Arbitrator's Exhibit #2(b)).
 - c). May 15, 1989, Letter confirming the hearing date and indicating that the hearing would be in Tampa, Florida sent by regular mail to Woodsmall at the Naples, Florida address (returned, marked unknown; evidenced by Arbitrator's Exhibit #2(c)).
 - d). November 24, 1989, Hearing advance sheet indicating the time, date, and location of the hearing as well as notifying Respondent of the identities of the arbitrators sent by certified mail to Woodsmall at Sparkle Pure, Inc. 3705, Highway 98 South, Lakeland, Florida 33813 (while no receipt was returned, neither was this mail ever returned as not delivered; evidence by Arbitrator's Exhibit #2(d)).
 - e). December 12, 1989, NASD staff phoned Woodsmall at Sparkle Pure, Inc. to remind him of the hearing scheduled for December 13, 1989. The person who answered indicated that Woodsmall would not be attending the hearing (evidenced by Arbitrator's Exhibit #2(e)).

4. Respondents Raymond James and Woodsmall are hereby liable, jointly and severally, and shall pay to Claimant the amount of Seven Thousand and 00/100 (\$7,000.00) Dollars.
5. Respondent Woodsmall is hereby liable and shall pay to Claimant the further amount of Nineteen Thousand Six Hundred Fifty and 00/100 (\$19,650.00) Dollars inclusive of interest at the legal rate of 12% per annum.
6. Respondent Woodsmall is hereby liable and shall pay to Claimant the further amount of Fifteen Thousand and 00/100 (\$15,000.00) Dollars for attorney's fees.
7. Respondent Woodsmall is hereby liable and shall pay to Claimant the further amount of Ten Thousand and 00/100 (\$10,000.00) Dollars for punitive damages.
8. Respondent Woodsmall is hereby liable and shall pay to Claimant the further amount of Five Hundred and 00/100 (\$500.00) Dollars for costs.
9. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400 X 2 sessions). Respondents are hereby assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars for which they are jointly and severally liable. The Respondents shall pay Four Hundred and 00/100 (\$400.00) Dollars directly to the Claimant as a return of her filing fee and Four Hundred and 00/100 (\$400.00) Dollars to the NASD, Inc. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant with the NASD, Inc.
10. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

Thomas Fotopulos, Esq.
Mr. James F. Turner III
Mr. Arthur De Stefano

Dated: January 24, 1990