

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
DAVID SULLIVAN.)
)
) Claimant.)
) Case #88-03742
) Award
)
vs.)
)
)
F. D. ROBERTS SECURITIES, INC., PHILIP)
)
NAPOLITON III and ROBERT HUMPHREY.)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Louise T. Jeroslow, Esq.
Michael A. Coco
George L. Davis

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 5, 1988. The hearing was conducted in Fort Lauderdale, Florida on December 11, 1989 and February 15, 1990, with a total of two sessions.

Claimant, David Sullivan ("Sullivan"), alleged that Respondents, F. D. Roberts Securities, Inc. ("FDR"), Philip Napoliton III ("Napoliton"), and Robert Humphrey ("Humphrey"), committed fraudulent acts and unauthorized trades; that Napoliton, while acting within the course and scope of his employment with FDR, wrongfully endorsed checks for the proceeds of sales of equity securities from Claimant's account, and cashed such checks; that Respondents' actions constitute violations of Section 10(b) of the Securities Exchange Act and Section 517.301, Florida Statutes; that Respondents committed fraud; negligent safekeeping of Claimant's assets; negligent supervision by FDR and Humphrey; negligent retention of Napoliton by FDR and Humphrey; and, breach of fiduciary duty.

Respondents, FDR and Humphrey, denied all allegations of wrongdoing; alleged that Claimant and Napoliton conspired to defraud FDR and Humphrey and that Claimant has failed to state a cause of action. Respondents cross claimed against Napoliton for indemnification.

Respondent, Napoliton, did not file an answer nor appear at the hearing of this matter.

RELIEF REQUESTED

Claimant requested damages in the amount of \$27,000.00, plus interest at the legal rate from January 29, 1987 in the amount of \$9,950.70, for a total of \$36,950.79; plus attorney's fees; punitive damages; costs and other relief.

Respondents, FDR and Humphrey, requested dismissal of claims and indemnification from Napoliton.

AWARD

On December 11, 1989 and February 15, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 23, 1988, and by Respondents, Humphrey on January 25, 1989; FDR on January 26, 1989; and not signed by Napoliton as required by Section 12(a) of the Code. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant has 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 Claimant has agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondent, Napoliton, is hereby liable pursuant to Section 517.301, Florida Statutes, and shall pay to Claimant the amount of Thirty Three Thousand Four Hundred Fifty and 79/100 (\$33,450.79) Dollars, inclusive of interest at the legal rate of 12% per annum from January 29, 1987, and which accounts for the amount received by Claimant in his settlement with Respondent, Humphrey.
3. Respondent, Napoliton, is hereby further liable and shall pay to the Claimant the amount of Twelve Thousand One Hundred Ninety Three and 76/100 (\$12,193.76) Dollars for attorney's fees pursuant to Section 517.211, Florida Statutes.
4. Claimant's request for punitive damages is hereby denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400.00 x two sessions). Respondents, Humphrey and Napoliton, are each assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars payable to the National Association of Securities Dealers, Inc. The NASD, Inc. shall refund the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant. The Four Hundred and 00/100 (\$400.00) Dollar assessment against Humphrey supercedes the Four Hundred and 00/100 (\$400.00) Dollar additional sessions deposit invoiced to Mr. Humphrey on December 14, 1989.
6. Respondent, Humphrey, is further assessed One Hundred and 00/100 (\$100.00) Dollars for the postponement obtained by him on December 11, 1989. This One Hundred and 00/100 (\$100.00) Dollar assessment is payable to the NASD, Inc. and supercedes the One Hundred and 00/100 (\$100.00) Dollar deposit invoiced to Mr. Humphrey on December 14, 1989.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Based upon the record in this proceeding, this Panel finds that the NASD, Inc. did everything possible to serve Respondent, Napoliton, with the Claim and that Napoliton received due notice of the hearing in this matter.

Based upon the Bankruptcy Petition filed by Respondent, FDR, and FDR's removal as a party to this matter, this Panel made no findings regarding the liability of FDR in this matter.

ARBITRATORS CONCURRING

Louise T. Jeroslow, Esq. and Michael A. Coco.

ARBITRATOR DISSENTING

The undersigned arbitrator concurs in the Award but dissents only to that part of the Award which grants attorneys' fees.

George L. Davis

Received this 19th day of March 1990.