

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
ROBERT PEPE,)
) Claimant,)
) Case #88-03762
vs.) Award
)
DEAN WITTER REYNOLDS)
and JOHN BABITSKAS,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Mark Perry, Esq.
Michael A. Coco
Douglas Delanoy, Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 8, 1988. The hearing was conducted in Fort Lauderdale, Florida on January 22 and March 15, 1990 with a total of four sessions.

Claimant, Robert Pepe ("Pepe"), alleged that Respondents, Dean Witter Reynolds, Inc. ("DWR") and John Babitskas ("Babitskas"), acting at all times within the course and scope of his employment with DWR, made misrepresentations of material facts and omitted to state material facts in connection with the recommendation of the purchase of equity securities in Claimant's account; recommended the purchase of securities that were unsuitable in light of Claimant's stated investment objectives; failed to sell securities pursuant to directions to do so; that Claimant was completely inexperienced in securities investment; that Respondents failed to explain the use and risks of margin, which was also unsuitable for Claimant; that Respondents' actions constituted violations of the NASD Rules of Fair Practice; Section 10(b), Rule 10-b5 and Section 20(a) of the Exchange Act; Section 517.301, Florida Statutes; Section 17(a) of the Securities Act; that Respondents' actions constituted fraud; breach of fiduciary duty; negligence; and, negligent supervision, all directly causing a substantial loss to Claimant.

Respondents denied all allegations of wrongdoing and alleged that Claimant did not truthfully disclose his financial condition; that Claimant had five years of investment experience and was interested in growth stocks; that Pepe authorized and, in some cases, initiated the purchases of stock in his account; that the securities recommended were suitable; that Claimant initiated the use of margin; that Respondents did not violate any duties to Claimant and that any losses were not the result of Respondents' actions.

RELIEF REQUESTED

Claimant requested damages in the amount of \$44,682.09, margin interest of \$347.37, interest, punitive damages, attorney's fees and costs, including cost of court reporter.

Respondent requested dismissal, attorney's fees and costs, including cost of court reporter.

AWARD

On January 22 and March 15, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 5, 1988, and by Respondent DWR on June 22, 1989 and Respondent Babitskas on June 23, 1989. 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 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. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant's requests for punitive damages and attorney's fees are hereby denied.
4. Respondents' request for attorney's fees is hereby denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, Claimant is hereby assessed forum fees in the amount of Two Thousand and 00/100 (\$2,000.00) Dollars (\$500.00 x four sessions) payable to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the Five Hundred and 00/100 (\$500.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction thereof.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Mark Perry Esq., Michael A. Coco and Douglas Delanoy, Jr.

Received this 22nd day of March 1990.