

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Ogden D. & Susanne Pinkerton

Claimant(s)

AWARD

vs.

CASE NO. 88-03785

Terrance Monroe, Boardwalk Capital
Corporation & Westlake Securities

Respondent(s)

SUMMARY OF ISSUES

This case was filed on December 15, 1988. Claimants alleged misrepresentation of material facts and lack of suitability with regard to investments in Swift Energy and with regard to purchases made in stock portfolio which were allegedly made on margin. Claimants alleged that Respondent Monroe negligently or intentionally failed to explain margin trading and the risks of the transactions entered into. Respondent Boardwalk alleged that claimant's account was handled with professionalism and in accordance with industry standards, that claimant's investments were suitable, that claimants were informed of the risks inherent in maintaining a margin account and that claimant had at least one other margin account and claimants authorized Boardwalk to establish and maintain a margin account and that claimants were informed of the risks inherent in option trading. Boardwalk alleged eight affirmative defenses. Respondent Monroe denied the allegations made by the Claimants. Respondent Monroe alleged that the investments made in Swift Energy and in stocks coupled with a covered call writing program were suited to their investment objectives, that stocks were purchased on margin only upon the repeated insistence of claimant and only after the risks of buying stock on margin were clearly explained, that representations were realistic, and that the losses are attributable to market risks which claimant as an experienced stock market investor, willing and knowingly undertook with full disclosure having been made to him as to the risk.

DAMAGES AND RELIEF REQUESTED

Claimants requested rescission of the transactions, a return of their lost interest, lost profits and general or punitive damages due to the misrepresentations of Respondent Monroe and lack of suitability of the investment for claimants. The total amount requested was \$112,046.89. Boardwalk requested that claimants take nothing by way of their Statement of Claim, that the Statement of Claim be dismissed with all costs being taxed against claimants, and for such other and further relief as the panel deems just and proper.

DAMAGES AND RELIEF AWARDED

On October 11 and 12, 1989, in four sessions in Honolulu, Hawaii, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on August 23, 1988, by Respondent Boardwalk Capital corporation on March 14, 1989 and by Respondent Terrance Monroe at the hearing in the presence of the arbitrators on October 11, 1989. At the beginning of the hearing counsel for Boardwalk Capital Corporation stated that he was appearing on the behalf of both Boardwalk and Westlake Securities and that Boardwalk and Westlake are the same entity. 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. Respondents are liable for and shall pay to the Claimants the sum of \$20,046.89. Said liability is joint & several.
2. The parties shall each bear their respective costs including attorneys' fees.
3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure:
 - a. The NASD shall retain the \$400.00 filing fee previously deposited by the Claimant. Respondents are liable and shall reimburse Claimants said \$400.00. Said liability is joint and several.
 - b. Respondents are assessed the remaining \$350.00 filing fee still owing to the NASD, to be paid directly to the National Association of Securities Dealers, Inc. Said liability is joint & several.
 - c. Respondents are jointly and severally liable for forum fees in the sum of \$2,250.00 to be paid directly to the National Association of Securities Dealers, Inc.

OTHER ISSUES

At the hearing Claimants' counsel made a motion to amend the claim to include an allegation that there was a failure of Respondents Boardwalk and Westlake to adequately supervise Respondent Monroe. Said motion was denied by the arbitration panel.

REPORT OF ARBITRATORS

1. In regard to the claim for return of losses on stock and option transactions, the panel concluded that the Pinkertons were damaged at least in the amount stipulated in the Statement of Claim and, therefore, found for the claimants in the full amount requested.

Mr. Monroe's testimony failed to reveal any formal education or training which would qualify him to hold himself out as an expert on the future course of the economy or the financial markets. No testimony was

presented that respondents Westlake or Boardwalk made any attempt to qualify Mr. Monroe as having any special expertise in these areas outside of holding the requisite securities licenses. Mr. Monroe based his investment program for the claimants upon what he acknowledged to be an unconventional economic outlook. His transactions on behalf of the claimants could only have been successful had this outlook, unsupported by the vast majority of economists, eventuated. To date, two years after the fact, Mr. Monroe's economic scenario has yet to be vindicated. In any case, it is only conjectural that Mr. Monroe's program would have been successful even had his unusual expectations materialized. The panel found that his decision to pursue a totally undiversified program based upon his unconventional outlook arrived at without any formal or demonstrable educational or other basis to be completely unsuitable for persons situated as were claimants. Further, while the panel did not believe that writing covered options was, per se, unsuitable for claimants, Mr. Monroe's professed strategy in covered writing was not adhered to, and that had it been adhered to, it was not prudently arrived at and that, in any event, Mr. Monroe was not able to demonstrate a sufficient comprehension of the operations and strategy of covered option writing to qualify him to undertake such a program on behalf of the claimants. The panel was skeptical of Mr. Monroe's assertion that the claimants overtly interfered with his option writing program by affirmatively contravening his recommendations. There was nothing in their history to suggest their taking any independent action against the advice of their various advisors. Had that been the case, the panel felt that a confirming memorandum or letter to the claimants should have been prepared to document Mr. Monroe's position, especially in view of Boardwalk's policy on suitability as stated in Claimants Exhibit page 087. Based upon the evidence presented, the panel discerned no attempt on the part of respondents Westlake or Boardwalk to consider the suitability of this type of undiversified option writing program for the claimants. Mr. Monroe testified that Westlake/Boardwalk periodically supplied their representatives with reports outlining their positions on the economy and/or individual stocks. He further testified that he only occasionally read this material, that it had no influence upon the investment recommendations he made and, by inference, was not required to be acted upon nor complied with by Westlake/Boardwalk.

The panel was unconvinced that the claimants ever comprehended the impact of trading on margin. While the claimants clearly executed a standard margin agreement, it was apparent to the panel that they believed they were signing more routine documents, not agreeing to, nor understanding, the potential import of using substantial financial leverage. The panel found that the use of margin was totally unsuitable for persons situated as were claimants.

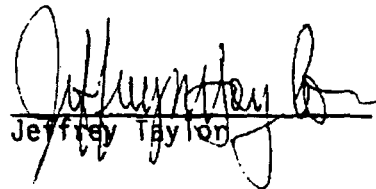
2. On the issue of Swift Energy, the panel felt that the first purchase of a \$7,000 interest was appropriate, under the then circumstances of the claimants. The second purchase of \$15,000 was deemed by the panel to possibly be inappropriate because of the illiquid nature of the investment, although illiquidity, per se, does not render an investment unsuitable. On the issue of damages relative to the \$15,000 increment, however, the panel was unable to discern that claimants were damaged. The partnership interest is relatively conservative, has been producing good income and

cash flow and has, to this point, been a worthwhile investment. The panel's principal objection to the \$15,000 purchase of Swift was its lack of liquidity. While testimony was introduced suggesting that the claimants were suffering from a loss of income, no arguments were presented that their liquidity, excepting the stock and option losses, was impaired. Since the \$15,000 Swift investment has performed more or less "as advertised," the panel could not conclude that the claimants were damaged by its purchase or that the \$15,000 increment was not suitable.

3. The Statement of Claim included a provision for lost income. There was no calculation nor demonstration of the basis upon which this claim was made. Assuming that the claimants were damaged by the stock/option transactions, the panel felt that interest on the lost funds in some amount might be due them from the event of loss to the present at a reasonable interest rate. On the other hand, the panel felt strongly that, had not the claimants been associated with the respondents, they would have been involved with financial markets through some other agent. This involvement would have, therefore, exposed them to the substantial decline in the market that occurred in the last quarter of 1987. Further, the impact of this decline was "locked in" by their decision to liquidate their account in January 1988 and no testimony was introduced as to in what the remaining funds were subsequently invested. Therefore, the panel felt that the unavoidable impact of the market decline and the highly probable exposure to it of the claimants was an offset to the unspecified calculation of loss of income referred to in the complaint or the entitlement of the claimants to interest on the lost funds from the occurrence of it to the present.

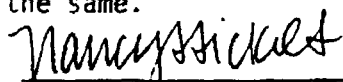
4. In regard to general/punitive damages, the panel was given no basis in law nor precedent for assessing same. While the panel was sympathetic to claimants, considering all of the circumstances, the panel did not see that it was the purpose of this proceeding to enforce the use of suitable investments upon respondents in their dealings with other customers based upon the claim as presented and the claimants Hearing Memorandum.

ARBITRATORS CONCURRING


Jeffrey Taylor

STATE OF Hawaii ss.:
City and
COUNTY OF Honolulu

On this 17th day of November 19 89, before me personally appeared Jeffrey Taylor to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


Nancy Siskel
Notary Public, State of Hawaii
My commission expires 1/1/93