

Arbitration

N.A.S.D. AWARD

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

David Stein, Esther Stein and)
Barbara Stein, individually and as)
custodian for Todd and Craig Stein)

Case No. 88-03886

Name of Respondent(s))

Raymond James & Associates, Inc.)
Daniel Law Dailey)
Douglas Morgan)

Heard before the members of the Arbitration Panel:

Craig Edward Stein, Esq.
Harry Polansky
Terrence W. Grant

Public
Public
Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on December 27, 1988 and amended on May 15, 1990. Claimants, David Stein; Esther Stein; and, Barbara Stein, individually and as custodian for Todd and Craig Stein ("Steins"), alleged that they were inexperienced investors; that Respondents, Raymond James and Associates, Inc. ("RJA"); Daniel Law Dailey ("Dailey"); and, Douglas Morgan ("Morgan"), solicited the Steins' business through Dailey; that Claimants turned over control of their accounts to Respondents; that Claimants' primary, expressed, investment objective was preservation of capital; that Respondents made misrepresentations of and omitted to state material facts; forged Claimants' signatures on certain of the new account documents; wrongfully utilized margin; made unsuitable transactions in equity securities, options, limited partnerships and index options; churned the accounts to maximize commissions; made unauthorized trades after Claimants directed them to cease all trading; that Respondents' actions constituted fraud, negligence, negligent supervision, breach of fiduciary duty, and violation of Section 517.301, Florida Statutes.

In a Statement of Answer filed with the NASD on May 16, 1989 and amended on September 11, 1989, Respondents denied all allegations of wrongdoing and alleged that David Stein was a knowledgeable, successful, business executive whose objective was aggressive trading; that he was the attorney in fact for all of the Claimants' accounts which were non-discretionary; that all trades were placed by Stein; and, that Respondents executed only those trades authorized by Stein.

Respondents alleged the affirmative defenses of assumption of risk; losses not proximately caused by Respondents; compliance with all applicable rules and regulations; full disclosure; full compliance with Claimants' instructions; authorization, ratification and estoppel; lack of intent, scienter and recklessness; failure to exercise due diligence; superceding, intervening causes; waiver; contributory or comparative negligence; lack of reliance; lack of causation by Respondents; due diligence; in pari delicto and unclean hands; Respondents entitled to attorney's fees pursuant to Chapter 57 and 517, Florida Statutes; failure to state a cause of action; and, laches.

Respondents filed a counterclaim and alleged that David Stein is liable to them for indemnification and attorney's fees. Respondents filed a third party claim against Douglas Cooper ("Cooper") and Citibank and alleged that they are responsible for indemnification and/or contribution.

Claimants/Counter Respondents denied all allegations of wrongdoing in the counterclaim.

RELIEF REQUESTED

Claimants requested damages in the amount of \$165,460.00 plus prejudgment interest of \$70,000.00, punitive damages of \$700,000.00, attorney's fees and costs.

Respondents requested dismissal, costs, expenses and other relief.

AWARD

On August 10 and 17, September 18 and 28 and December 28, 1990 (pre-hearing conferences); and on January 3 and 4 and February 22, 1991 in Fort Lauderdale, Florida and on February 23, 1991 in Miami, Florida, during a hearing lasting twelve (12) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on December 20, 1988, by Dailey on September 8, 1989, by Morgan on August 14, 1989, and signed on August 11, 1989 by Dennis W. Zank on behalf of Respondent, RJA, and not signed by Citibank or Douglas Cooper who declined to voluntarily submit to arbitration.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 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.
2. Respondent, Morgan, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondents, RJA and Dailey, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$1.00.
4. Respondents, RJA and Dailey, are found liable, jointly and severally, and shall pay to the Claimants the further amount of \$18,225.00 for attorney's fees, pursuant to Section 517.211, Florida Statutes and 9 U.S.C. Section 1 et seq., and \$4,688.23 for costs, for a total amount of \$22,913.23. This amount is solely for the work performed by attorney Joseph L. Caruncho.
5. This Panel further determines that Douglas Cooper is entitled to neither attorney's fees nor costs for his representation of the Claimants in this matter. Therefore, Claimants' requests for attorney's fees and costs attributable to the proofs submitted by Mr. Cooper are denied.
6. Claimants' request for punitive damages is denied.
7. Claimants/Counter Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
8. Counter Claimants' requests for attorney's fees and costs are denied.
9. The Third Party Claims against Cooper and Citibank were neither considered nor adjudicated by this Panel.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$9,200.00 (eight sessions x \$1,000.00, including one pre-hearing conference with three arbitrators, plus four pre-hearing conferences with one arbitrator x \$300.00). Respondent, RJA, is hereby assessed \$9,200.00, \$1,000.00 of which shall be paid directly to the Claimants, and \$8,200.00 of which shall be paid to the National Association of Securities Dealers, Inc.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrators Signatures

/s/
Craig Edward Stein, Esq.

/s/
Harry Polansky

/s/
Terrence W. Grant

Date of Decision: APRIL 24, 1991

OTHER ISSUES

None.

Concurring Arbitrators Signatures

Craig Edward Stein

Date of Decision: APRIL 24, 1991

OTHER ISSUES

None.

Concurring Arbitrators Signatures

Terrence W. Groat.

Date of Decision: APRIL 24, 1991

OTHER ISSUES

None.

Concurring Arbitrators Signatures

Harry Tolansky

Date of Decision: APRIL 24, 1991