

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
INTEGRATED RESOURCES EQUITY CORP.,)
)
) Claimant,)
) Case #89-00080
vs.) Award
)
HENRY F. SIMMS and ELINOR SIMMS,)
)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Leonard H. Davidson, Esq.
Judy Avey
Leslie Bishop

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 10, 1989. The hearing was conducted in Fort Lauderdale, Florida on February 13 and 14 and May 29 and 31, 1990 with a total of eight (8) sessions.

Claimant, Integrated Resources Equity Corp. ("Integrated"), alleged that the Respondents, Henry F. Simms and Elinor E. Simms ("Simms"), opened a joint cash and margin account with Claimant; that falling prices of the stock positions in the account generated a margin call; that Claimant liquidated the positions which left a deficiency debit balance; and, that Respondents' failure and refusal to pay the debit balance constitutes breach of the margin agreement.

Respondents alleged that Claimant, through its wholly owned partnership, Financial Resources Group ("FRG"), Donald Hout and Paul F. McCarthy Jr., made misrepresentations of material facts and omitted to state material facts to induce the Simms to open a margin account and trade in index options; that Claimant did not explain the use of margin nor the inherent risks in writing index options; that Claimant traded an excessive volume of index options in the Simms' account; that Claimant's actions placed the Simms' principal at high risk in direct contradiction to their stated investment objectives; that Claimant's recommendations and strategy was unsuitable for Respondents; that Claimant made unauthorized trades in the account; that Claimant's actions constituted violations of the federal and state securities laws; civil theft pursuant to Chapters 812 and 772, Florida Statutes; that Claimant breached its fiduciary duty to the Simms; and, that Claimant's actions constituted misrepresentation and negligence.

RELIEF REQUESTED

Claimant requested damages in the amount of \$123,522.45, interest, attorney's fees, costs and other relief. Respondents requested compensatory damages in the amount of \$150,871.00 plus interest and the income and appreciation the account should have earned; pre-judgment interest, costs and expert witness fees pursuant to Sections 517.211(6), 772.104 and 772.11, Florida Statutes; reasonable attorney's fees pursuant to Chapters 517, 772 and 812, Florida Statutes; and, punitive damages and other relief.

AWARD

On February 13 and 14 and May 29 and 31, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 15, 1988, and by Respondents on April 28, 1988. 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, the Simms, are found liable and shall pay to Claimant the amount of One Hundred Twenty Three Thousand Five Hundred Twenty Two and 45/100 (\$123,522.45) Dollars plus interest at the legal rate of 12% per annum from November 1, 1987 through May 31, 1990 in the amount of Forty Two Thousand Two Hundred Seventy and 03/100 (\$42,270.03) Dollars for a total due to Claimant of One Hundred Sixty Five Thousand Seven Hundred Ninety Two and 48/100 (\$165,792.48) Dollars.
3. Claimant's request for attorney's fees is hereby denied for lack of evidence.
4. Claimant/Counter Respondent, Integrated, is found not liable to the Respondents/Counter Claimants and, therefore, all counter claims against it are hereby dismissed.
5. Respondents/Counter Claimants' requests for expert witness fees, attorney's fee and punitive damages are hereby denied.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondents/Counter Claimants, the Simms, are hereby assessed forum fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars (eight sessions x \$750.00). The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Simms, in partial satisfaction of those fees.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Pursuant to Respondents' request, the Panel has declined to state the basis of its decision of this matter.

ARBITRATORS CONCURRING

Leonard H. Davidson Esq., Judy Avey and Leslie Bishop.

Received this 13th day of June 1990.