

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
JOHN and NANCY DAINUS,)
) Claimants,)
) Case #89-00345
vs.) Award
)
BLINDER ROBINSON & CO, INC. and)
STEVE CLAY,)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

John P. Cullem, Esq.
Mr. Roger C. Benson
Mr. Ralph Feith

CASE SUMMARY

This claim was filed with the NASD, Inc. on February 9, 1989. The hearing was conducted in Tampa, Florida on December 13, 1989 with a total of two (2) sessions.

Claimants John and Nancy Dainus ("the Dainus") alleged that Respondents Blinder Robinson and Co., Inc. ("Blinder") and Steve Clay ("Clay") were liable for: Churning; misrepresenting the return on investment Claimants could expect; the safety of trading penny stock; the amount of commissions charged; the manner in which compensation to Clay would be calculated; the risks involved in trading penny stock; the suitability of the securities purchased for the Claimants in light of Claimants' financial objectives; and that Blinder was liable for failure to supervise. Respondent Blinder denied liability and asserted affirmative defenses including: failure to state a claim; that the damages are speculative, remote and unsupported by competent evidence; failure to exercise due diligence; estoppel; waiver; that Clay was adequately supervised, and was an independent contractor; Claimants' losses were not caused by Blinder; breach of contract; and laches. Respondent Clay alleged that Claimants: were informed of all the risks; received prospectuses; were told that Blinder was a market maker in those instances where it acted as such; never expressed any concerns or unhappiness over the transactions; were suitable for the securities; made the decision to buy or sell exclusively on their own; and were told how commissions were calculated.

RELIEF REQUESTED

Claimants requested damages in the amount of \$30,853.10 plus attorney's fees and other costs. Respondents requested dismissal of the claim.

AWARD

On December 13, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on January 30, 1989, and by Respondents Blinder on June 12, 1989 and Clay on June 8, 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 Blinder and Clay are hereby liable, jointly and severally, and shall pay to Claimants the amount of Twenty Five Thousand Four Hundred Seventy Six and 58/100 (\$25,476.58) Dollars inclusive of interest at the legal rate of 12% per annum.
3. Claimants' request for attorney's fees is hereby dismissed in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Respondents forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400 X 2 sessions), Four Hundred and 00/100 (\$400.00) Dollars of which shall be payable directly to Claimants as a return of their filing fee and Four Hundred and 00/100 (\$400.00) Dollars of which shall be paid to the NASD, Inc. The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

John P. Cullem, Esq.
Mr. Roger C. Benson
Mr. Ralph Feith

Dated: February 26, 1990