

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Phyllis G. Garratt

Claimant

vs.

L. F. Thompson & Co., Inc.,  
Brian H. Zilke and  
Michael J. Weinstein

Respondents

AWARD

CASE NO. 89-00901

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 28, 1989. Claimant alleged misrepresentation, unsuitability, and failure to supervise in connection with her investment of 1,200 shares of Propulse Industries penny stock.

Respondents L. F. Thompson & Co., Inc. and Brian H. Zilke filed a joint statement of answer and denied the allegations and maintained that the investor assumes the burden of risk inherent when investing in a penny stock.

Respondent Michael J. Weinstein denied the allegations and maintained the investment was suitable based upon the information contained in the new account forms; that the investment was unsolicited; and that claimant made her own investment decisions.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended at the hearing, in the amount of \$1,092.00 for actual damages, \$200.00 for interest at seven percent (7%), \$25.00 for postage costs, \$50.00 for telephone expenses, \$45.00 to close out the brokerage account, \$5.00 for notary fee, \$25.00 for the filing fee in the present action, \$200.00 for lost wages, and unspecified punitive damages.

Respondents requested dismissal of the claim.

DAMAGES AND RELIEF AWARDED

On May 25, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 6, 1989 and May 8, 1989 and by Respondent Michael J. Weinstein on August 16, 1989. Respondents L. F. Thompson & Co., Inc. and Brian H. Zilke did not file submission agreements but are subject to the

jurisdiction of this arbitration pursuant to Section 12 of the Code of Arbitration Procedure. The hearing was conducted in San Francisco, California and lasted one session. The arbitrator, 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 L. F. Thompson & Co., Inc., Brian H. Zilke and Michael J. Weinstein are hereby jointly and severally liable for and shall pay to Claimant the sum of One Thousand, Three Hundred Seventy-Seven Dollars and Zero Cents (\$1,377.00) calculated as follows:

- a. actual damages in the amount of \$1,092.00;
- b. interest on the actual damages awarded in the amount of \$160.00; and
- c. \$125.00 representing costs.

2. The claims for lost wages and punitive damages are dismissed, there being no legal basis for an award.

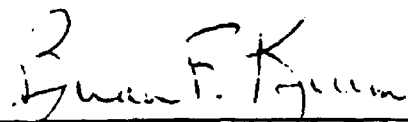
3. The parties shall each bear their respective costs including attorneys' fees, except as provided in Paragraph 1.

4. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$25.00 filing fee previously deposited by the Claimant. Respondents are hereby jointly and severally assessed the sum of \$25.00 representing the filing fee and shall reimburse Claimant directly.

#### OTHER ISSUES

Respondents L. F. Thompson & Co., Inc. and Brian H. Zilke, duly notified of the arbitration hearing pursuant to the Code of Arbitration Procedure, did not appear at the hearing; this award is entered as if each party had entered an appearance in the matter submitted.

PRESIDING ARBITRATOR

  
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Brian F. Kram

DATE SERVED: 06/08/90