

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
CASANDRA K. MCCORD,)
) Claimant,)
) Case #89-01374
vs.) Award
)
IRI SECURITIES CORP., ROBERT A. MAAS,)
)
JOSEPH R. MCCARTY and KEITH A. LOVELAND,)
)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.
Mr. Harry Polansky
Mr. Samson Silberman

CASE SUMMARY

This claim was filed with the NASD, Inc. on May 9, 1989. The hearing was conducted in Fort Lauderdale, Florida on May 30, 1990 with a total of two (2) sessions.

Claimant, Casandra McCord ("McCord") alleged that Respondents, IRI Securities Corp. ("IRI"), Robert Maas ("Maas"), Joseph McCarty ("McCarty") and Keith Loveland ("Loveland") were liable for: negligence; fraud; violations of Florida and Federal Securities laws; breach of fiduciary duties; and, as it relates to IRI, Loveland and McCarty, negligent supervision.

Specifically, Claimant alleged that Maas recommended the purchase of certain warrants without informing Claimant of their limited "shelf life" and failed to advise her to sell prior to their expiring worthless. Claimant also alleged that Maas abused his fiduciary responsibility by placing shares of Royex Gold Mining Corp. stock in Claimant's SEP account.

Respondent, IRI, alleged that: the trades were in accordance with Claimant's investment objectives; Claimant was an experienced business person who wanted to speculate; and Claimant failed to mitigate her damages. IRI requested that they be indemnified by Maas for any Award rendered against them.

Respondent, Maas, alleged that: Claimant was informed of the risks involved; losses, in the account, were mostly due to the October 1987 market crash; Claimant wanted to invest in speculative securities; Claimant was a sophisticated business person; Claimant was informed of workings of warrants and that IRI was a market maker for the warrants' issuer. Maas asserted the affirmative defenses of: failure to state a claim; insufficiency of pleadings; waiver/ratification/estoppel; lack of fiduciary relationship; and lack of scienter. Additionally, Maas asserted a crossclaim against IRI for indemnification.

Respondent, McCarty, alleged that: he was not the compliance officer for the entire time that Claimant's account was active; Claimant's investment objectives were speculation; Claimant never contacted McCarty to complain; Maas was under the direct supervision of a sales supervisor and the firm's president; McCarty received no benefit from Claimant's account and otherwise denied liability.

Respondent, Loveland, alleged that: Claimant's investment objectives were intermediate term price appreciation and speculation; Claimant was aware that the warrants were tradeable; Loveland acted in a professional manner and followed all rules and regulations; no reports were ever made of Maas misrepresenting the warrants; and Claimant was a sophisticated investor.

Claimant responded to Loveland's Motion for More Definite Statement and alleged that Loveland had supervisory responsibility over Maas.

RELIEF REQUESTED

Claimant requested damages in the amount of \$32,526.03 plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the Claim.

AWARD

On May 30, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 19, 1989, and by Respondents, IRI, on July 6, 1989, and Maas on July 3, 1989 and not signed by Respondents, Loveland and McCarty, as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"). Respondents, Loveland and McCarty, being persons associated with an NASD member firm, IRI Securities Corp., at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing and Respondents, IRI, Loveland and McCarty neither appearing at the hearing nor requesting any postponement thereof, notwithstanding their knowledge of this hearing, as evidenced in the record of proceedings, the arbitration panel has determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondent, Maas, 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, Claimant and Respondent, Maas, have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents, Maas and IRI, are liable, jointly and severally, and shall pay to the Claimant the amount of Two Thousand Four Hundred Seventeen and 00/100 (\$2,417.00) Dollars.
3. Claimant's request for attorney's fees is hereby dismissed in all respects.

4. Respondents, Loveland and McCarty, are not liable and, therefore, the claims against them are hereby dismissed.
5. Respondent, IRI, is not liable to Respondent, Maas, and, therefore, the crossclaim against it is hereby dismissed.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400 x 2 sessions). Claimant is hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars and Respondents, IRI and Maas, are hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars for which they shall be jointly and severally liable. 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 with the NASD, Inc. in full satisfaction of Claimant's share of such forum fees.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

1. Jurisdiction exists pursuant to Section 12 of the Code.
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service upon and adequate notice to Respondents, IRI, Loveland and McCarty. The NASD has made every attempt to locate and serve Respondents, IRI, Loveland and McCarty with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

ARBITRATORS CONCURRING

Casey W. Mills, Esq.
Mr. Harry Polanky
Mr. Samson Silberman

Dated: June 13, 1990