

N.A.S.D. AMENDED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Richard J. Pistone)

Case No. 89-01669

Name of Respondent(s))

Wakefield Financial Corp.)

Terry Fiorillo)

Frank Casillo)

Warren Green)

Alexander Minella)

Heard before the members of the Arbitration Panel:

Joseph L. Bernstein, Esq.

Terrence W. Grant

George R. Canty, Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on June 7, 1989. The hearing was conducted in Fort Lauderdale, Florida on September 11 and 12, 1990 with a total of five (5) sessions.

Claimant, Richard J. Pistone ("Pistone"), alleged that Respondents, Wakefield Financial Corp. ("Wakefield"), Terry Fiorillo ("Fiorillo"), Frank Casillo ("Casillo"), Warren Green ("Green"), and Alexander Minella ("Minella"), failed and refused to execute his sell orders in Componentguard, Inc. stock; made misrepresentations of material facts and omitted to state material facts; that Wakefield was the sole underwriter of and market maker in Componentguard; that Fiorillo, as agent and employee of Wakefield, made unauthorized trades and failed to execute orders; that Casillo failed to register with the Florida Division of Securities in violation of Florida Statutes, Section 517.12; that Wakefield and Minella were negligent in supervising the other Respondents; that the Respondents' actions also constituted violation of Section 517.301 and 812.035(7) (Civil Theft), Florida Statutes; Section 10(b) and Rule 10b-5 of the 1934 Exchange Act; Rules 405 and 435 of the NYSE; Article III, Sections 2 and 27(a) of the NASD; and, that Respondents' actions constituted fraud and breach of fiduciary duty.

Respondent Fiorillo denied all allegations of wrongdoing; alleged that she advised Pistone against taking a loan to buy Componentguard; and, that Pistone advised by letter that if the stock went to zero, it would not hurt him financially.

Respondent Casillo denied all allegations of wrongdoing and alleged that he spoke to Pistone in Fiorillo's absence only in his capacity as compliance officer and did not give any information about nor recommend any stock; that Casillo did not refuse to sell but advised Pistone that the discount commission desired by Pistone was unacceptable; and that Pistone chose to sell elsewhere. Casillo alleged the affirmative defense of assumption of risk.

Respondent Green alleged that he worked with Fiorillo; offered Pistone Componentguard at the bid on February 25, 1989; and, that Pistone ordered the stock.

Respondent Minella denied all allegations of wrongdoing and alleged that Pistone gave a limit order to sell at a specified price contingent on obtaining a discounted commission; that Minella advised Casillo that that amount of stock could be sold on an agency basis but not at the demanded commission; and, that Claimant assumed the risk.

Respondent Wakefield failed to file an Answer or to defend at the hearing.

RELIEF REQUESTED

Claimant requested damages in the amount of \$216,447.66; punitive damages as measured by the Civil Theft Statute; interest; attorney's fees pursuant to Section 517.211, Florida Statutes; and, costs.

Respondents requested dismissal and costs.

AWARD

On September 11 and 12, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 12, 1987, and by Respondents, Fiorillo on October 6, 1989; Casillo on August 22, 1989; Green on July 24, 1989; Minella on September 10, 1990; and, not signed by Respondent Wakefield as required pursuant to Section 12 and 25 of the Code of Arbitration Procedure. The Panel has jurisdiction over Wakefield by virtue of its being a member firm at the time the facts giving risk to this controversy occurred. 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, Wakefield, Fiorillo, Casillo and Minella, are found liable to the Claimant. Respondents, Wakefield and Minella, shall be jointly and severally liable and shall pay to the Claimant the amount of Thirty Five Thousand and 00/100 (\$35,000.00) Dollars; Respondent, Fiorillo, shall pay to the Claimant the amount of Thirty Five Hundred and 00/100 (\$3,500.00) Dollars; and, Respondent, Casillo, shall pay to the Claimant the amount of Fifteen Hundred and 00/100 (\$1,500.00) Dollars.
3. Claimant's requests for punitive damages, interest, attorney's fees and costs are denied.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Five Thousand and 00/100 (\$5,000.00) Dollars (\$1,000.00 x five sessions). Wakefield and Minella are hereby assessed forum fees, jointly and severally, in the amount of Four Thousand Three Hundred Seventy Five and 00/100 (\$4,375.00) Dollars of which One Thousand and 00/100 (\$1,000.00) Dollars shall be paid directly to the Claimant and Three Thousand Three Hundred Seventy Five and 00/100 (\$3,375.00) Dollars shall be paid to the National Association of Securities Dealers, Inc., less credit for the One Hundred and 00/100 (\$100.00) Dollar postponement fee deposit paid by Minella for a postponement request which was denied. Respondent, Fiorillo, is hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars payable to the National Association of Securities Dealers, Inc. Respondent, Casillo, is hereby assessed forum fees in the amount of Two Hundred Twenty Five and 00/100 (\$225.00) Dollars payable to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimant which the Claimant shall recoup as set forth above.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

Pursuant to Claimant's ore tenus Motion to Enforce the Settlement Agreement between Claimant and Respondent Green (in which the Claimant agreed to settle with Green in return for payment of \$1,500.00) which Green acknowledged but sought to revoke, this Panel has granted the Motion to Enforce. Pursuant to that settlement agreement, the claims against Green are dismissed.

ARBITRATORS CONCURRING

Joseph L. Bernstein Esq., Terrence W. Grant, George R. Canty Jr.

Received this 23rd day of October 1990.