

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Philip E. Clayton

Claimant

vs.

Graystone Nash, Inc.

Thomas Ackerly

Dennis Williams

Joseph Gentile

Respondents

vs.

Richard Dioguardi

Third Party Respondent

AWARD

Case #89-01727

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 13, 1989 the Claimant Philip E. Clayton alleged the Respondents made misrepresentations of fact to him and failed to inform him of material information. Respondent Graystone Nash, Inc. maintained it has no knowledge as to any conversations between Third Party Respondent, Richard Dioguardi and the Claimant and has no knowledge of any representations made by Third Party Respondent Richard Dioguardi and further maintained it does not guarantee a profit to a customer. Respondent, Thomas Ackerly maintained there is no wrongdoing alleged on behalf of Respondent Thomas Ackerly and at the times referred to he was the President of Graystone Nash, Inc., but not a shareholder nor the general securities representative that handled Claimant's account.

Respondent Joseph Gentile maintained there is no wrongdoing alleged on behalf of Respondent Joseph Gentile as he was at no time an officer, shareholder, agent, employee or director of Graystone Nash, Inc. and therefore is not a proper party to the proceeding.

Respondent Dennis Williams maintained he was merely an investor in the franchise of Graystone Nash, Inc. and did not participate in or oversee the daily activities or operations of the company. Respondent Dennis Williams further maintained he acted in an corporate capacity and the Claimant has not presented any evidence of fraud or other bases that would cause him to be named personally or result in personal liability. Respondent Dennis Williams asserted a third party claim against Respondent Richard Dioguardi alleging he was responsible for the misrepresentations and mishandling of the Claimant's account and that Third Party Respondent Richard Dioguardi was

acting on his own behalf, outside of the parameters established by the firm. Third Party Respondent Richard Dioguardi maintained that if there were any misrepresentations, they were received by him through a due diligence meeting conducted by Respondents Dennis Williams, Thomas Ackerly, and other officers and representatives of Graystone Nash, Inc. and the franchise and further maintained he is not a culpable party. Third Party Respondent Richard Dioguardi further maintained he conducted himself in a responsible and professional manner at all times never acting on his own behalf but in the interest of his clients and never outside the parameters of the firm or any regulatory agencies.

RELIEF REQUESTED

Claimant requested damages of \$9,093.75 plus interest from January 1988.

Respondents Graystone Nash, Inc., Thomas Ackerly and Joseph Gentile requested dismissal of claim plus interest, disbursements and legal fees.

Respondent Dennis Williams requested dismissal of claim and that the Claimant be liable for reasonable attorneys' fees and costs in responding to this claim. Respondent Dennis Williams further requested that if the Claimant recovers against him that Third Party Respondent Richard Dioguardi shall become liable to him for any and all sums due and owing by Respondent to Claimant, in addition to all costs, expenses and attorneys' fees expended by Respondent in defending this action.

Third Party Respondent Richard Dioguardi requested dismissal of all claims against him and further requested that any award rendered be rendered against Respondents Graystone Nash, Inc., Thomas Ackerly, Dennis Williams and Joseph Gentile.

AWARD

On August 15, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Philip E. Clayton on May 25, 1989 and by Respondent Graystone Nash, Inc. on July 31, 1989 and by Respondent Thomas Ackerly on July 31, 1989 and by Respondent Dennis Williams on July 5, 1989 and by Respondent Joseph Gentile on August 2, 1989 and by Third Party Respondent Richard Dioguardi on October 9, 1989. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in Washington, DC and consisted of one (1) hearing 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. All claims by all parties be and hereby are dismissed in all respects;

2. The cost of the conference call conducted on August 15, 1990 shall be split equally among Respondents Graystone Nash, Inc., Thomas Ackerly, Dennis Williams and Joseph Gentile with each party paying one-quarter (1/4) of the total cost of the call;

3. The parties shall each bear their respective costs, including attorneys' fees;

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200.00 filing fee previously deposited by the Claimant.

ARBITRATOR SIGNATURE


John W. Johnson, Esq.

DATE: October 26, 1990