

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Charles & Mary Brodsal and
Marianne & Alfred Young

CASE #89-02337

Name of Respondent(s)

Graystone Nash, Inc.
Thomas Ackerly
Kevin O'Riordan

Heard before the members of the Arbitration Panel:

Joseph L. Bernstein, Esq.
Janet C. Zwiebel
Andrew Bartfay

Public Arbitrator
Industry Arbitrator
Public Arbitrator

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 21, 1989. Claimants, Charles and Mary Brodsal ("the Brodsals") and Marianne and Alfred Young ("the Youngs"), alleged that Respondents, Graystone Nash, Inc. ("Graystone"), Kevin O'Riordan ("O'Riordan") and Thomas Ackerly ("Ackerly"), were liable for: fraud and deceit; breach of fiduciary duty; negligence; and violations of federal and Florida Securities laws for recommending unsuitable equity securities and manipulating the movement of certain equity securities.

In a Statement of Answer filed with the NASD on February 20, 1990, Respondents, Ackerly and Graystone, alleged that Claimants were suitable investors and asserted affirmative defenses including: that Claimants made a profit on some of the stocks; failure to mitigate damages; that the accounts were not discretionary; the bonuses cited by Claimants were not in effect at the time of the transactions; punitive damages are not available under the NASD Code of Arbitration; and Ackerly is an improper party to this action.

In a Statement of Answer filed with the NASD on February 20, 1990, Respondent, O'Riordan, alleged that he had no discretionary authority over the accounts; Claimants were sophisticated investors; O'Riordan explained the risks involved; Claimants chose not to liquidate their positions when they could have made a profit; Claimants were suitable for the investments; and no fraud was committed. Additionally, see paragraph (2) of Other Issues.

RELIEF REQUESTED

Claimants, the Broedals, requested damages in the amount of \$7,877.56 plus punitive damages of \$10,000 plus interest, attorney's fees and costs. Claimants, the Youngs, requested damages in the amount of \$10,117.43 plus punitive damages of \$10,000 plus interest, attorney's fees and costs.

Respondents requested dismissal of the claim.

AWARD

On October 23, 1990, December 3, 1990 and April 10, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, on July 27, 1989 and signed by Thomas Ackerly, individually, and on behalf of Respondent, Graystone, on February 12, 1990, and by Respondent, O'Riordan on February 15, 1990. Respondents, Graystone and Ackerly, failed to appear for the hearing sessions on April 10, 1991 or to seek adjournment thereof.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents, Graystone and Ackerly, have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.
2. Respondents, Graystone and Ackerly, are found liable, jointly and severally, for fraud and deceit, breach of fiduciary duties, negligence and violations of Florida and Federal Securities laws and shall pay to Claimants, the Youngs, the amount of \$10,043.58 inclusive of interest at the legal rate of 12% per annum from August 4, 1988 to April 10, 1991.

3. Respondents, Graystone and Ackerly, are also found liable, jointly and severally, for fraud and deceit, breach of fiduciary duties, negligence and violations of Florida and Federal Securities laws and shall pay to Claimants, the Broedals, the amount of \$9,555.46 inclusive of interest at the legal rate of 12% per annum from September 16, 1987 to April 10, 1991.

4. Respondents, Graystone and Ackerly, are also found liable, jointly and severally, for punitive damages and shall pay to the Youngs the further amount of \$5,000. The arbitrators find that their authority to award punitive damages is based on the application of the Federal Arbitration Act and the underlying case law.

5. Respondents, Graystone and Ackerly, are also found liable, jointly and severally, for punitive damages and shall pay to the Broedals the further amount of \$5,000. The arbitrators find that their authority to award punitive damages is based on the application of the Federal Arbitration Act and the underlying case law.

6. Respondents, Graystone and Ackerly, are also found liable, jointly and severally, and shall pay to Claimants, the Broedals and the Youngs, the further amount of \$7500 for attorney's fees pursuant to Section 517.211 of the Florida Statutes.

7. Claimants' requests for other costs are denied.

FORUM FEES

8. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,600 (4 sessions x \$400 per session). Respondents, Graystone and Ackerly, are hereby assessed \$1,600.00, jointly and severally, of which \$400 shall be paid directly to the Claimants, the Broedals and the Youngs, as a return of their filing fees, and \$1,200 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the \$400 previously deposited by the Claimants in partial satisfaction of such forum fees.

9. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES


1. Respondents, Graystone and Ackerly, failed to appear at the April 10, 1991 hearing and did not seek an adjournment thereof, notwithstanding their knowledge of that hearing as evidenced by the March 29, 1991 letter from Lester Morse on behalf of Graystone & Ackerly.

2. On April 9, 1991, the NASD, Inc. received a voluntary Petition in Chapter 7 for Respondent, Kevin O'Riordan, which was filed on April 5, 1991. Pursuant to the automatic stay provisions of the United States Bankruptcy Code Respondent O'Riordan has been removed as a party to this case.


Concurring Arbitrators' Signatures



Joseph L. Bernstein, Esq.



Andrew Bartfay



Janet C. Zweibel

Date of Decision: May 29, 1991