

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

D.K. Seltsam

89-03434

Name of Respondents

Westport Financial Group, Inc.,
Jerome S. Stein,
Robert M. Fehrmann,
Silvestro F. Veneziano, and
Securities Settlement Corp.

REPRESENTATION

Claimant, D. K. Seltsam was represented by Joseph P. Soraghan, Esq. of Morganstern, Soraghan, Stockenberg, McKittrick & Gould of St. Louis, Missouri.

Respondent, Westport Financial Group, Inc. was represented by Robert M. Fehrmann, formerly President of Westport Financial Group, Inc. of St. Louis, Missouri.

Respondent, Jerome S. Stein appeared pro se.

Respondent, Robert M. Fehrmann appeared pro se.

Respondent, Silvestro F. Veneziano appeared pro se.

Respondent, Securities Settlement Corporation, Inc. was represented by Stephen P. Bedell, Esq. of Gardner, Carton & Douglas of Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant, D. K. Seltsam on December 7, 1989.

Claimant, D. K. Seltsam's Submission Agreement was signed on December 27, 1989.

The Statement of Answer was filed by Respondent, Westport Financial Group, Inc. on March 15, 1990.

Respondent, Westport Financial Group, Inc, did not file a Submission Agreement with the NASD.

A Statement of Answer was filed with the NASD by Respondent, Robert M. Fehman on March 15, 1990.

Respondent, Robert M. Fehman did not file an executed Submission Agreement with the NASD.

Claimant, D. K. Saltsam filed a First Amended Statement of Claim with the NASD on April 24, 1990.

Claimant, D. K. Saltsam filed a Second Amended Statement of Claim with the NASD on May 1, 1990.

A Statement of Answer was filed with the NASD by Respondent, Silvestro M. Veneziano on September 13, 1990.

Respondent, Silvestro F. Veneziano did not file an executed Submission Agreement with the NASD.

Respondent, Jerome S. Stein did not file either an Answer to the Statement of Claim or an Executed Submission Agreement with the NASD.

A Statement of Answer and Motion to Dismiss the Second Amended Statement of Claim was filed with the NASD by Respondent, Securities Settlement Corporation on August 23, 1990.

Respondent, Securities Settlement Corporation's Submission Agreement was signed by Bernard L. Finger on August 22, 1990.

HEARING INFORMATION

The hearing dates and number of hearing sessions per day were as follows:

January 8, 1992 for two (2) hearing sessions;
January 9, 1992 for two (2) hearing sessions;
January 10, 1992 for two (2) hearing sessions;
February 26, 1992 for two (2) hearing sessions; and,
February 27, 1992 for two (2) hearing sessions.

The hearing location was St. Louis, Missouri.

CASE SUMMARY

Claimant, D. K. Seltzam ("Seltzam") alleged that Respondent, Jerome S. Stein ("Stein") while employed at Respondent, Westport Financial Group, Inc. ("Westport Financial") recommended to Seltzam that he purchase securities which were highly speculative without informing Seltzam of this fact. Seltzam further alleged that many of the securities which were purchased for his account were not authorized for sale to Missouri residents because they were not registered pursuant to Missouri Revised Statutes, Section 409.301 or pursuant to the federal law. Seltzam also alleged that many of the transactions in Seltzam's account were unauthorized. Additional causes of action asserted by Seltzam included breach of fiduciary duty, negligence and violations of the Racketeer Corrupt Organizations Act ("RICO"). Seltzam also asserted that Westport Financial, Respondent, Securities Settlement Corporation ("Securities Settlement"), Robert M. Fehrman ("Fehrman") and Silvestro Veneziano ("Veneziano") failed to properly supervise Stein.

Respondent, Westport Financial denied the allegations of the claim including specifically denying that the securities sold to Seltzam were unregistered. Westport Financial alleged that any damages to Seltzam were caused by reason of his own acts or omissions.

Respondent, Fehrman also denied the allegations of the claim and specifically denied that any of the securities sold to Seltzam were unregistered or that any of the securities transactions engaged in for Seltzam were unauthorized. Fehrman also denied the claim regarding his alleged failure to adequately supervise Stein.

Respondent, Veneziano denied the allegations of the claim. Veneziano alleged that he had no knowledge of any unauthorized trades in Seltzam's account.

Respondent, Securities Settlement also denied the allegations of the claim and requested dismissal of the claims as filed against it as a matter of law. The basis for the Motion to Dismiss was that Securities Settlement asserted that it was only the clearing agency for the brokerage firm, Westport Financial and as such there was no contractual relationship between Securities Settlement and Seltzam.

Securities Settlement filed a crossclaim against Stein, Fehrman and Veneziano for indemnification in the event Seltzam made any recovery on his claim against Securities Settlement.

Stein, Fehrman and Veneziano did not file written answers to the cross-claim for indemnification.

RELIEF REQUESTED

Seltsam requested compensatory damages of \$211,914.33, trebled to \$635,742.99 pursuant to the RICO Act, attorney's fees of \$7,100.00, costs of the proceeding, interest at 8% per annum from October 31, 1989 and punitive damages of \$175,000.00.

Fehrman, individually and on behalf of Westport Financial requested dismissal of the claim.

Veneziano requested dismissal of the claim.

Securities Settlement requested dismissal of the claim and asserted in its motion to dismiss the claim as a matter of law on the basis that it was a clearing agency which was not liable for damages from the customer, Seltsam.

Stein did not file an answer with an affirmative request for relief for the panel to consider.

Securities Settlement also crossclaimed for indemnification from Stein, Fehrman and Veneziano.

No written answer with an affirmative request for the panel to consider in response to the crossclaim for indemnification was received from Stein, Fehrman or Veneziano.

OTHER ISSUES CONSIDERED & DECIDED

Although Stein failed to file an executed Submission Agreement with the NASD, or an Answer to the Statement of Claim, Stein appeared at the hearing on the first three days, testified and was subject to cross examination. In addition, the panel determined that Stein was obligated to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("NASD Code") and accordingly, Stein will be bound by the arbitration panel's decision on all issues submitted for determination.

The panel also holds that Fehrman and Veneziano who both answered the claim and appeared and testified at the hearing were obligated to submit to arbitration pursuant to Section 12 of the NASD Code and they will be bound by the panel's determination on all issues submitted despite failure to file with the NASD duly executed Submissions to Arbitration.

The panel also holds that Veneziano and Stein voluntarily chose not to appear on the last two days of the arbitration hearing. The panel went forward with the hearing in their absence on the last two days of the hearing pursuant to the

authority to do so as set forth in Section 29 of the NASD Code. Veneziano's non-appearance on the last two days of the hearing does not foreclose the fact that the panel holds that he will be bound by the panel's determination on all issues submitted.

Fehman requested leave to file a counterclaim against Saltzman and the panel did not grant Fehman's request.

The parties did not agree to execution of the award in counterpart copies.

AWARD

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

1. Saltzman's claim asserted against Veneziano shall be and is hereby denied and dismissed in its entirety;
2. Saltzman's claim asserted against Securities Settlement shall be and is hereby denied and dismissed in its entirety. Securities Settlement's Motion to Dismiss is thereby mooted;
3. Fehman, Westport Financial and Stein are jointly and severally liable for and shall pay to Saltzman, inclusive of interest, from the date the petition was filed until March 15, 1992, the sum of Two hundred fifty six thousand ninety five dollars and seventy nine cents (\$256,095.79). The award is entered against Westport Financial to the extent that this entity is not under the protection of the Federal Bankruptcy Law. If Westport Financial is so protected, the award as specified herein is only entered jointly and severally against Stein and Fehman in their individual capacity;
4. Fehman, Stein and Westport Financial are also jointly and severally liable for and shall pay to Saltzman, attorney's fees in the amount of Eighty one thousand six hundred five dollars and seventy five cents (\$81,605.75). This award of attorney's fees is entered pursuant to the authority for such relief set forth in the Missouri Securities Act. Again, to the extent that Westport Financial may enjoy the protection of the Federal Bankruptcy Law, the award of attorney's fees is only entered against Stein and Fehman in their individual capacity;
5. Saltzman's claims for punitive and treble damages under RICO are specifically denied and dismissed;
6. Securities Settlement's crossclaims against Stein, Fehman and Veneziano are dismissed as moot; and,

7. The parties will each bear their own costs, expenses and attorney's fees not otherwise specifically enumerated herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$1000.00 hearing session deposit made with the NASD by Claimant, Saltz. Saltz is assessed and shall pay to the NASD the \$250.00 non-refundable claim filing fee which was not paid to the NASD when the claim was filed. Additional Forum Fees in the amount of \$4,500.00 are assessed against Stein and additional Forum Fees in the amount of \$4,500.00 are assessed against Fehrmann. Securities Settlement is assessed and shall pay to the NASD the non-refundable claim filing fee in the amount of \$500.00 which sum was to be paid upon the filing of its cross-claim against Stein, Fehrmann and Veneziano.

Forum Fees were assessed on the basis of \$1000.00 per hearing session for ten (10) hearing sessions. All additional Fees and any unpaid filing fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Herbert Lasky, Esq.
Presiding Chairman/Public Arbitrator

May 7, 1992

Edward C. Lawrence
Panelist/Public Arbitrator

May 7, 1992
Dated

Edward Ward, Esq.
Panelist/Industry Arbitrator

May 7, 1992
Dated

Date Award Served by the NASD: May 8, 1992