

N.A.S.D. AWARD

Arbitration

③

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Adele D'Agostini)

Name of Respondent(s))

Sprung & Wise Securities)

Timothy Wise)

Ben Coffin)

Nicholas J. Sprung)

Case No. 90-00007

Heard before the Arbitrator:

John P. Cullen, Esq.

Public

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on December 27, 1989. Claimant, Adele D'Agostini (D'Agostini"), alleged that Respondents, Ben Coffin ("Coffin"), Nicholas Sprung ("Sprung"), Timothy Wise ("Wise"), and Sprung and Wise Securities, Inc. ("SWS"), were liable for the failure of SWS' employee, Coffin, to purchase a certain mutual fund as instructed and for Coffin's purchase of penny stocks contrary to Claimant's instructions.

In a Statement of Answer filed with the NASD on May 16, 1990, Respondent, Wise, alleged that he was Vice President and Director in charge of the Finance Department and Syndication Department and as such, he had no contact with Claimant and did not have supervisory responsibility over Coffin. Wise alleged that SWS was in the process of filing bankruptcy under Chapter 7 of the United States Bankruptcy Code although no notice of the bankruptcy was ever provided to the NASD.

In a Statement of Answer filed with the NASD on January 7, 1991, Respondent, Sprung, alleged that: he had no contact with Claimant; did not approve any trades, accounts or other transactions regarding Claimant; the branch office where Claimant maintained her account was independently owned; and, Nick Dimitrijevič was responsible for supervising Coffin and approving trades.

Respondents, Coffin and SWS, failed to file Answers and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in the amount of \$30,000.00 inclusive of interest.

Respondents, Sprung and Wise, requested dismissal of the Claim and Respondents, SWS and Coffin, failed to file Answers.

AWARD

On March 14, 1991, in Tampa, Florida, during a hearing lasting one (1) session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, D'Agostini, on December 1, 1989, and not signed by any of the Respondents, as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"), Respondent, SWS, being an NASD member firm and Respondents, Wise, Sprung and Coffin, being persons associated with an NASD member firm, Sprung and Wise Securities, Inc., at the time this controversy arose.

After considering the pleadings, the testimony, and the evidence presented at the hearing, and Respondents, Coffin, Sprung, Wise and SWS, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding their knowledge of this arbitration as evidenced in the record of proceedings, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Wise, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondents, SWS, Sprung and Coffin, are found liable, jointly and severally, for conversion, fraud and misrepresentation, among other reasons, and shall pay to the Claimant the amount of \$20,660.00, plus interest at the legal rate of 12% per annum from March 28, 1988 to March 14, 1991, in the amount of \$7,349.30 for a total due to the Claimant of \$28,009.30.

FORUM FEES

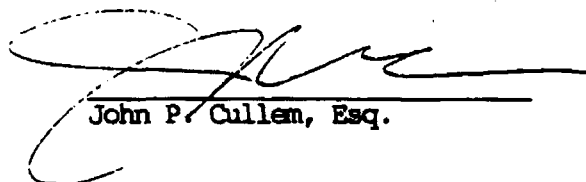
1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$400.00 (one session x \$400.00 per session). Respondents, SWS, Sprung and Coffin, are hereby assessed \$400.00, jointly and severally, payable directly to the Claimant as a return of her filing fee. The NASD, Inc. shall retain the \$400.00 previously deposited in full satisfaction of such forum fees.
2. Respondent, Sprung, is hereby assessed \$25.00 for rental of a speaker phone on March 14, 1991, to be paid directly to the NASD, Inc.
3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorneys' fees.

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

OTHER ISSUES

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure and pursuant to the Form U-4 signed by Respondents, Sprung, Wise and Coffin.
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Arbitrator finds service upon and adequate notice to Respondents, SWS, Wise, Sprung and Coffin. The NASD has made every attempt to locate and serve Respondents, SWS, Wise, Sprung and Coffin, with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.
3. This Arbitrator finds that no notice of any bankruptcy proceeding on behalf of Respondent, SWS, was received by the NASD, the Arbitrator or Claimant as of the date of this Award. If in fact a bankruptcy has been filed by SWS prior to the date of this Award, the Award made against SWS is subject to the Bankruptcy Court's jurisdiction and review.

Arbitrator Signature



John P. Cullen, Esq.

Date of Decision: April 1, 1991