

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

David Friedman

Name of Respondent(s)

North American Investment Corporation
Paul Kardos

Case No. 90-00868

Heard before the arbitrator:

Marilyn B. Cane, Esq.

Public

REPRESENTATION

Claimant, David Friedman ("Friedman"), was represented by Russell L. Forkey, Esq. of Russell L. Forkey, P.A.

Respondent, North American Investment Corporation ("NAIC"), was represented by Gary D. Lavigne, Esq. of Patrick M. Prue & Associates, P.C.

Respondent, Paul Kardos ("Kardos"), represented himself.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 23, 1990. Claimant alleged that Respondents made misrepresentations of and omitted to state material facts; recommended and made unsuitable trades in penny stocks and low priced equity securities for Claimant's account; that Respondents' acts constituted fraud, breach of fiduciary duty, negligence and negligent supervision.

Respondent, NAIC, filed a Statement of Answer with the NASD on May 22, 1990. NAIC denied all allegations of wrongdoing and alleged that the claim fails to state a cause of action; that Claimant is only complaining because of a loss in the four stocks remaining in his account; lack of causation; and, no discretion granted to Kardos.

Respondent, NAIC, filed a crossclaim against Kardos and alleged that pursuant to the registered representative agreement between Kardos and NAIC, Kardos is liable for any errors or omissions in his client accounts.

Respondent, Kardos, filed a Statement of Answer with the NASD on July 8, 1991. Respondent denied all allegations of wrongdoing and alleged that Claimant failed to offer any evidence; that Claimant invented the so-called strict instructions in his letter dated December 12, 1988; no discretion granted to Kardos; and, that great care was used in handling the account.

RELIEF REQUESTED

Claimant requested damages in the amount of \$12,684.82, interest, punitive damages of \$15,000.00 and costs.

Respondents requested dismissal and costs. NAIC further requested indemnification from Kardos for any amount awarded and expenses.

AWARD

On July 17, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 28, 1990, on May 18, 1990 by Joy B. Erickson, Vice President, on behalf of Respondent, NAIC, and by Respondent, Kardos, on July 2, 1991.

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

1. Respondents, NAIC and Kardos are found liable and shall pay to the Claimant the total amount of \$17,784.12 for compensatory damages as follows:
 - a. NAIC and Kardos are liable to the Claimant, jointly and severally, for the amount of \$9,486.45, plus interest at the legal rate of 12% per annum in the amount of \$3,813.55, for a total of \$13,300.00 due to Claimant from Respondents, jointly and severally. (NAIC is found liable pursuant to the stipulation for entry of award against NAIC in the amount of \$13,300.00. See See other Issues.)
 - b. Kardos is also liable to the Claimant, individually, for the further amount of \$3,198.37, plus interest at the legal rate of 12% per annum in the amount of \$1,285.75, for an additional total of \$4,484.12 due to Claimant from Kardos.
2. Claimant's request for punitive damages is denied.
3. Respondent, Kardos, is found not liable to NAIC on the crossclaim and, therefore, all crossclaims against him are hereby dismissed.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$600.00 (two sessions x \$300.00). Respondents, NAIC and Kardos, are hereby assessed \$600.00, jointly and severally, \$300.00 of which shall be paid directly to the Claimant, and \$300.00 of which shall be paid to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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

OTHER ISSUES

1. Respondent, NAIC, did not appear for the hearing in this matter. On July 16, 1991, counsel for NAIC telefaxed a letter dated July 15, 1991 and executed by counsel for the Claimant and NAIC to the NASD. Said letter stipulated to the entry of an award against NAIC in the amount of \$13,300.00. The arbitrator, having considered the pleadings and reviewed the attached stipulation for entry of an award, hereby consents to the stipulation and incorporates said stipulation by reference into this Award.

2. On July 8, 1991, the NASD received Respondent Kardos' Answer to the Claim. Said Answer was untimely in that it was filed more than one (1) year after it was due and nine (9) days prior to the hearing. On July 12, 1991, Claimant moved to strike the Answer as untimely and to bar presentation of any matter, facts or defenses. After careful consideration, it was initially determined that Respondent Kardos' Answer would be allowed only upon postponement of this proceeding in order to:

- a. permit Claimant to prepare to meet the untimely raised defenses;
- b. avoid prejudice to the Claimant by requiring Respondent, Kardos, to produce documents which he had previously been compelled to produce by Order dated January 16, 1991; and,
- c. permit Kardos to request and obtain documents from the Claimant.

The postponement fee was assessed against Respondent, Kardos. After Kardos stated that he would not pay the postponement fee; had not asked for or desired a postponement; and, was ready to proceed, the undersigned explained the alternatives to Mr. Kardos as follows:

- a. either there would be a postponement for which Respondent, Kardos, would be assessed; or
- b. the matter would proceed on July 17, 1991, with Kardos' Answer stricken due to the prejudice to Claimant.

Respondent, Kardos, elected to proceed on July 17, 1991 and, after reading his objection into the record, departed the hearing. Pursuant to Section 29 of the Code, the hearing proceeded in his absence.

3. On July 8, 1991, Respondent, Kardos, also filed a Motion to Dismiss the Crossclaim against him. That Motion was not considered due to Kardos' departure. However, due to NAIC's failure to appear to prosecute its crossclaim, the crossclaim was dismissed.

Arbitrator's Signature



Marilyn B. Cane, Esq.

Date of Decision: July 26, 1991