

N.A.S.D. AWARD

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)

John Converse

CASE #90-01020

Name of Respondent(s)

Richard Ginsberg

Heard before the members of the Arbitration Panel:

Philip F. Ludovici, Esq.  
Diane M. Perry  
Samson Silberman

Public  
Public  
Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 9, 1990. Claimant, John Converse ("Converse"), alleged that Respondent, Richard Ginsberg ("Ginsberg"), was liable for: violating Chapter 517 of the Florida Statutes; common law fraud; breach of fiduciary duty; negligence; and breach of contract. Claimant alleged that Respondent: misrepresented that certain securities transactions were consistent with Claimant's investment objectives and financial condition; failed to disclose that the transactions were unsuitable; misrepresented the expected return on investments in certain treasury bonds as well as the safety and expected income from such investments; failed to disclose that the sale of European securities in Florida without registration was unlawful; failed to disclose that Respondent's father and Sandstone Securities Corp. were not licensed to sell such securities in Florida; and failed to disclose that Claimant's investment was switched from Danish treasury bonds to European currency commodity futures contracts.

In a Statement of Answer filed with the NASD on November 19, 1990, Respondent, Ginsberg, alleged that: he never solicited the Claimant to invest in European treasury bonds through his father; Ginsberg had no participation in the transactions and never told Claimant that he recommended the transactions; Claimant acknowledged that the level of activity was consistent with his investment objectives and instructions; Claimant never expressed dissatisfaction with the way his account was handled; and unforeseen market conditions caused the losses in the account.

Respondent, asserted the affirmative defenses of: failure to state a claim; assumption of risk; ratification; account stated; estoppel; waiver; laches; unclean hands; failure to mitigate damages; the losses were caused by Claimant's own negligence; Claimant failed to timely notify Respondent of any complaints; lack of reliance; lack of scienter; lack of criminal intent; Statutes of Limitations; and violation of the Florida and Federal Constitutions.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$128,232.72 or alternatively damages in the amount of \$206,004.78 plus punitive damages, costs and attorney's fees pursuant to Chapter 517 of the Florida Statutes.

Respondent requested dismissal of the claim.

#### AWARD

On February 12 and February 15, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, with a prehearing conference on January 21, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on April 6, 1990 and signed by Respondent on June 4, 1990.

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. The parties 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. Respondent, Ginsberg, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Claimant's request for attorney's fees, costs, and punitive damages are denied.

**FORUM FEES**

4. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,000 (4 sessions x \$1000 per session plus \$1000 for the prehearing conference on January 21, 1991). Claimant is hereby assessed \$2,500 for which the NASD shall retain the \$1,000 previously deposited in partial satisfaction thereof. Respondent, Ginsberg, is hereby assessed \$2,500 payable to the National Association of Securities Dealers, Inc.

5. 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.

Concurring Arbitrator's Signatures

/s/  
Philip F. Ludovici, Esq.

/s/  
Diane M. Perry

/s/  
Samson Silberman

Date of Decision: March 14, 1991