

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimants

Thomas & Naomi Bailey

vs.

90-01191

Name of Respondents

Titan/Value Equities Group, Inc.
N. Phillip Mayeux

REPRESENTATION

For Claimant: Steven J. Gard, Esq., Page & Bacek.

For Respondents: Terry R. Weiss, Esq. Smith, Grambrell & Russell.

CASE INFORMATION

Statement of Claim filed: April 26, 1990.

Claimant's Submission Agreement signed on: March 28, 1990.

Joint Statement of Answer filed on: June 27, 1990.

Respondent, Titan/Value Equities Group, Inc., Submission Agreement signed on:
August 29, 1990.

Respondent, N. Philip Mayeux, Submission Agreement signed on: June 26, 1990.

HEARING INFORMATION

Hearing Dates/Hearing Sessions: March 26, 1991 - Two sessions;
March 27, 1991 - One session;
April 17, 1991 - Two sessions;
April 18, 1991 - Two sessions;
April 19, 1991 - One session;
June 19, 1991 - Two sessions;
June 20, 1991 - Two sessions;
June 21, 1991 - Two sessions;

Hearing Location: Atlanta, Georgia.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between/Among:)
)
THOMAS J. BAILEY and NAOMI O. BAILEY,)
) ARBITRATION NO.
) 90-01191
Claimant(s))
vs.)
) AWARD
TITAN/VALUE EQUITIES GROUP, INC. and)
)
N. PHILIP MAYEUX,)
)
Respondent(s))
)
.....)

CASE SUMMARY

This case involves the investment account of Thomas J. Bailey and Naomi O. Bailey. This account was opened on or about February 9, 1984 and was held and managed by Titan/Value Equities Group, Inc. The Broker for this account was N. Philip Mayeux.

Claimants allegations can be summarized as follows. The Respondent, N Philip Mayeux, recommended several investments to Claimants which were unsuitable for them and did induced Claimants to invest more than half of their irreplaceable retirement assets in high risk ventures. Claimants maintain Mr. Mayeux misrepresented the actual risks involved in these investments. It is also alleged that virtually all of Mr. Mayeux's investment advise was inappropriate. Also, Mr. Mayeux's investment advise was motivated by his desire to increase commission income and not by Claimants' actual needs or financial circumstances. It is further alleged that Titan/Value Equities Group, Inc. failed to effect its legal obligation to supervise Claimants' investment account and the conduct of Mr. Mayeux. In the aggregate, it is alleged that the actions and

ommissions of Respondents amounted to breach of contract, breach of a fiduciary duty, common law fraud, securities fraud and racketeering. Further, as the result of these actions and ommissions, the Claimants suffered substantial emotional distress and hardship. Claimants also maintain the Respondents are jointly and severally liable for Claimants losses.

The Respondents denied the allegation set out in the Statement of Claim and asserted that their actions, with regard to the Claimants' investments, were proper and legally correct. Respondents also alleged the Claimants failed to exercise due or reasonable care when making investment decisions and when supervising their investment account activities. That the Claimants were competent and able to manage their financial affairs and were responsible for the losses occasioned by their own choices. Further, the Claimants are alleged to have failed in their legal obligation to mitigate their own damages. Respondents also asserted a bar to recovery on any of Claimants' purchases which occurred prior to April 25, 1984. This bar is based upon the six (6) year statute of limitations contained in Section 15 of the N.A.S.D. Code of Arbitration Procedure.

RELIEF REQUESTED

Claimants' Statement of Claim sought an award against Respondents, jointly and severally, for out-of-pocket damages in excess of \$135,661.00, damages reflecting the anticipated performance of a well-managed conservative portfolio or for unrealized performance of certain stock from the sales date through the date of the arbitration hearing, damages for emotional distress, punitive

damages, all costs or disbursements, reasonable attorneys' fees, pre and post judgment interest, and such additional relief as the panel deems just and proper. During the arbitration hearings Claimants asserted a right to the remedy of rescission and asserted their Statement of Claim contained a request for a rescissory measure of damages. This was disputed by Respondents. The Response sought the rejection of all of Claimants' prayers for relief and to have all costs of the arbitration assessed against the Claimants.

MOTIONS

During the arbitration hearing Respondents' moved for the dismissal of Claimants' case. This Motion was denied. During the course of the hearing Claimants' Motion to Exclude Evidence Was tendered for review. This Motion was denied. Other oral motions were presented during the course of the arbitration hearing and these were ruled upon.

OTHER RULINGS

The Panel finds the Claimants mitigated their damages as required by law. The Panel also finds for Respondents on the statute of limitations issue and holds the Claimants may not recover for account purchases which were made more than six years prior to the filing of the Statement of Claim. However, the Panel may consider such purchases and their suitability when resolving other legal or factual issues.

AWARD

On March 26, March 27, April 17, April 18, April 19, 1990, June 19, June 20, and June 21, 1991 the undersigned Arbitrators heard the controversy between the parties, as set forth in the submissions to arbitration signed by the Claimants, dated March 28, 1990, and by Respondents, dated June 5, 1990 and June 26, 1990. The hearings were held in Atlanta, Georgia and consisted of fourteen sessions. The Panel of Arbitrators having considered the pleadings as well as the testimony and evidence presented at the hearing, the undersigned Arbitrators have determined the following, in full and final resolution of the issues submitted for adjudication:

1. The undersigned Arbitrators find for Claimants on all issues of fact raised in this case. The Panel awards compensatory and consequential damages of Two Hundred Sixty Two Thousand Seventy Eight and 45/100 Dollars (\$262,078.45) to Claimants jointly and severally against Respondents, Titan/Value Equities Group, Inc. and N. Philip Mayeux. Interest is specifically excluded.

2. The parties shall each bear their respective costs including attorneys' fees. The claim for punitive damages is denied.

3. Pursuant to Section 43 of the Code of Arbitration Procedure, the Respondents shall refund to the Claimants their filing fees of \$750.00, which were previously deposited with the N.A.S.D.

4. Respondents are assessed forum fees in the amount of \$13,500.00 which shall be payable to the N.A.S.D. through its staff counsel.

DATED:

August 10, 1991

William Edmund Burke
WILLIAM EDMUND BURKE, CHAIRPERSON.

David S. Saylor
DAVID S. SAYLOR, ARBITRATOR.

Drew R. Fuller
DREW R. FULLER, ARBITRATOR.