

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Paragon Capital Corporation

Case No: 90-01216

Name of Respondent(s)

**John Kelly
William Crowe, as Personal Representative of
the Estate of Linda Kelly
Money Management Resources, Ltd.
Thomas Nelson Taylor**

REPRESENTATION

For Claimant, Paragon Capital Corporation ("Paragon"): Paul Aiello, Esq. of Broad and Cassel.

For Respondents, John Kelly ("Kelly") and Money Management Resources, Ltd. ("MMR"): James J. Moylan, Esq.

For Respondent, William Crowe, as Personal Representative ("PR") of the Estate of Linda Kelly ("Crowe"): pro se.

For Respondent, Thomas Nelson Taylor ("Taylor"): pro se.

CASE INFORMATION

Statement of Claim filed: April 30, 1990. Claimant's Submission Agreement signed: April 19, 1990 by Danny T. Levine on behalf of Paragon.

Respondents' Joint Statement of Answer filed: July 16, 1990. Respondents' Submission Agreements signed: June 6, 1990 by John Kelly on behalf of MMR and on July 6, 1990 by Kelly, individually.

Respondent, Crowe, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code. However, see Other Issues.

Respondent, Taylor, did not sign a Submission Agreement as required by Sections 12 and 25

of the Code. However, see Other Issues.

HEARING INFORMATION

On January 18 and 19, 1993, in Fort Lauderdale, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Kelly, made misrepresentations of and omitted to state material facts; made fraudulent misrepresentations and unauthorized purchases of IPM, Inc stock in others' accounts to manipulate the market price for their own benefit; acted knowingly or with reckless disregard; and, that Respondents' actions constituted violation of Section 10(b) of the 1934 Exchange Act, Chapter 517, Florida Statutes and common law fraud.

Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of: failure to state a claim; *in pari delicto*; Claimant's loss due solely to its own actions; and, Claimant's agent, Taylor, instigated all complained of activities and is responsible for the losses.

Respondents, Kelly and MMR, filed a Counterclaim and Third Party Claim and alleged that Claimant and Third Party Respondent, Taylor, were liable for all losses. These claims were dismissed at the hearing. See Other Issues.

RELIEF REQUESTED

Claimant requested damages of \$180,000.00, punitive damages of \$540,000.00, attorney's fees, interest and costs.

Respondents requested dismissal, costs, attorney's fees and other relief.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent, Crowe, was added as the PR of the Estate of Respondent, Linda Kelly, at the beginning of the hearing of this matter by one ~~tenus~~ Motion to Amend made by Claimant and without objection of Respondents, Kelly and MMR. Linda Kelly died during the pendency of this matter but, despite NABD requests, no proof of death nor substitution of her Estate was ever provided or requested by the parties.
2. Prior to her death, Linda Kelly filed a Motion to Dismiss the claim against her. After consideration of all the evidence and arguments of the parties, that Motion is granted.
3. Respondent, Taylor, was named in the Third Party Claim by Respondents, Kelly and MMR, but no fees were ever paid for the Third Party Claim or the Counter Claim. For the first time at the hearing, these parties requested waiver due to inability to pay. The Panel took evidence on the inability of Kelly and MMR to pay and, after consideration, denied the waiver.

request. Respondents dismissed the Third Party Claim and Counterclaim without prejudice to file a separate claim at a later time.

4. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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 claims against Respondent, Crowe, are dismissed.
2. Respondents, Kelly and MMR, are found liable, jointly and severally, for fraud in violation of Section 517.301, Florida Statutes. They shall pay to the Claimant the amount of \$177,713.74, plus interest at the legal rate of 12% per annum, to the date of this award, in the amount of \$68,597.22, for a total due to the Claimant of \$246,310.96.
3. Respondents, Kelly and MMR, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$10,000.00 for attorney's fees pursuant to Section 517.211, Florida Statutes. This Panel has the authority to award these fees pursuant to the Federal Arbitration Act and the case law construing that Act.
4. Claimant's request for punitive damages is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (three sessions x \$1,000.00).
2. Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. of \$500.00.
3. Respondents, Kelly and MMR, are hereby assessed \$1,500.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. Pursuant to Section 30 of the Code, the Panel assessed a postponement fee in the amount

of \$1,000.00 against the Claimant for the postponement of the hearings scheduled for December 8, 9 and 10, 1992.

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

Concurring Arbitrators' Signatures

Thyron Huray, Esq.

Public

Industry

Public

Date of Decision: MARCH 15, 1993

END