

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	)	
	)	
<u>Name of Claimant(s)</u>	)	
	)	
Bradley D. Brown	)	
	)	
	)	Case No. 90-01296
	)	
<u>Name of Respondent(s)</u>	)	
	)	
Dominick & Dominick Incorporated	)	
Raymond Mailhot	)	
	)	

REPRESENTATION

For Claimant, Bradley Brown ("Brown"): Guy Burns, Esq. of Johnson, Blakely, Pope, et. al.

For Respondent, Raymond Mailhot ("Mailhot"): Thomas Grady, Esq. of the Law Offices of Thomas R. Grady.

For Respondent, Dominick & Dominick, Inc. ("Dominick"): Richard Warren, Esq. of Fleming, Hale & Shaw, P.A.

CASE INFORMATION

Statement of Claim filed: May 7, 1990. Claimant's Submission Agreement signed: April 26, 1990.

Respondents, Dominick and Mailhot's, Statement of Answer filed: July 17, 1990. Respondents' Submission Agreements signed by Mailhot on September 23, 1991, and by Robert Harrison on behalf of Dominick on May 15, 1990.

HEARING INFORMATION

On May 6, 1991, and September 13, 1991, in Tampa, Florida, Pre-hearing Conferences lasting two (2) sessions were conducted via telephone conference call. The Pre-hearing Conference on May 6, 1991 was conducted without an arbitrator and the one on September 13, 1991 was conducted with an arbitrator.

On September 23, and 24, 1991; February 6, and 7, 1992; in Tampa, Florida, hearings lasting nine (9) sessions were conducted.

### CASE SUMMARY

Claimant alleged that Respondents were liable for breach of fiduciary duty; negligence; negligent supervision; and, violations of Chapter 517 of the Florida Statutes. Claimant alleged that Respondent, Mailhot, failed to disclose the risks involved in purchasing stock in a certain savings and loan; failed to disclose that such investment was speculative; induced Claimant into over-concentrating his assets in one security; and, made no effort to comply with the "know your customer" rules.

Respondents denied all allegations of wrongdoing and alleged that Mailhot discussed, with Claimant, his financial background; Claimant inquired about speculative investments; Claimant was a sophisticated investor who was interested in speculation; Mailhot did not solicit Brown to purchase either the initial trade or subsequent trades in the stock; and, Mailhot advised Claimant to diversify. Respondents asserted the affirmative defenses of; estoppel; ratification; any damages were caused by events beyond Respondents' control; failure to mitigate damages; failure to exercise due diligence; negligence on the part of Claimant; good faith; and, statutes of limitations.

### RELIEF REQUESTED

Claimant requested damages of approximately \$225,000.00 plus interest, costs, attorney's fees and punitive damages.

Respondents requested dismissal of the claim.

### OTHER ISSUES CONSIDERED & DECIDED

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Mailhot, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent, Dominick, is found liable and shall pay to the Claimant the amount of \$35,000.00.
3. Claimant's request for attorney's fees, costs, interest and punitive damages are denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$7,050.00 (one pre-hearing conference x \$300.00 plus nine sessions x \$750.00 per session). Respondent, Dominick, is hereby assessed \$7,050.00, \$550.00 of which shall be paid directly to the Claimant, and \$6,500.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain the \$550.00 previously deposited by the Claimant in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

/s/  
Thomas Fotopulos, Esq.

Public

/s/  
Charles R. Newcomer, Jr.

Industry

/s/  
James R. Kennedy, Jr., Esq.

Public

Date of Decision: May 27, 1992