

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

George H. Gage)
George Gage Individual)
Retirement Account)

Case No. 90-01371

Name of Respondent(s))

Cigna Securities, Inc.)
Dennis G. Stearns)
Jan E. Mercedes)
Mercedes, Stearns & Associates)
Cigna Individual Financial Services Co.)

REPRESENTATION

For Claimants, George H. Gage ("Gage") and George H. Gage Individual Retirement Account ("Gage IRA"): Guy M. Burns, Esq. of Johnson, Blakely, Pope, et al.

For Respondents, Cigna Securities, Inc. ("Cigna"), Cigna Individual Financial Services Co., ("CIFS") Mercedes, Stearns & Associates ("MSA") Dennis G. Stearns ("Stearns") and Jan Mercedes ("Mercedes"): Douglas J. Titus, Jr., Esq. and Frederick S. Schriels, Esq. of Holland & Knight. Mercedes and Stearns were at times also represented by Michael C. Addison of Dykema Gossett.

CASE INFORMATION

Statement of Claim filed: May 14, 1990. Claimants' Submission Agreement signed: May 11, 1990.

Respondents' Statement of Answer filed: July 26, 1990. Respondents' submission agreements signed by Stearns and Mercedes individually and on behalf of MSA on July 19, 1990, and by James E. Anderson on behalf of Cigna on July 25, 1990 and by David C. Kopp on behalf of CIFS on July 23, 1990.

HEARING INFORMATION

Pre-hearing conferences were held with the Panel on November 8, 1990 and May 8, 1991 in Tampa, Florida, lasting 2 sessions. The pre-hearing conference on November 8, 1990 was conducted by telephone conference call and the one on May 8, 1991 was in person. Hearings lasting 57 sessions were conducted in Tampa, Florida on November 14, 15 and 16, 1990; March 20, 21 and 22, 1991; April 10, 11 and 12, 1991; April 24, 25 and 26, 1991; May 9 and 10, 1991; July 10, 11 and 12, 1991; September 4, 5 and 6, 1991; October 2, 3 and 4, 1991; October 17 and 18, 1991; and December 9 and 11, 1991.

CASE SUMMARY

Claimants alleged that Respondents, through misrepresentations, induced Claimants into purchasing limited partnership interests which were unsuitable in light of Claimants' investment objectives; and that Respondents were liable for breach of fiduciary duty; negligence and gross negligence; negligent supervision; common law fraud; breach of contract; violations of the anti-fraud provisions of the Florida and federal securities laws; violation of investment advisor registration provisions of Florida and federal securities laws; and civil remedies for criminal practices under Florida law.

Respondents denied all allegations of wrongdoing and alleged that Claimants' investment objectives were tax benefits, growth and income; that Claimant Gage stated that he had no need of liquidity; that Claimant Gage was suitable for the investments and was a sophisticated investor; and that Claimant Gage was informed of the risks involved. Respondents asserted affirmative defenses of: assumption of risk; setoff; waiver; estoppel; independent intervening acts; statutes of limitations; and failure to state a claim for punitive damages.

RELIEF REQUESTED

Claimants requested damages in the approximate amount of \$1,754,800.00 for their total principal contributions plus interest, costs, treble, and other punitive damages, and a determination that Claimant is entitled to recover his attorney's fees.

Respondents requested dismissal of the Statement of Claim, with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimants also sought to make claims for life insurance products sold to the Claimants by Respondent Stearns and to call witnesses to testify in that regard. Respondents requested that Claimants be prohibited from presenting any evidence regarding or relating in any way to insurance matters. These issues were disposed of by a Preliminary Order of this Panel on March 20, 1991 which granted Respondents' Motion to Exclude Insurance Issues.

2. 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 original(s) 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. Respondents Cigna, CIFS, MSA, Stearns and Mercedes are found liable, jointly and severally, for violation of the anti-fraud provisions of the Florida securities laws, negligence, gross negligence, breach of fiduciary duties and common law fraud and shall pay to Claimants Gage and the Gage IRA the amount of \$1,800,000.00 inclusive of interest. Respondents Cigna and CIFS also are found liable, jointly and severally, for negligent supervision, which constitutes an additional basis of their aforesaid joint and several liability for the aforesaid sum.

2. Respondents Cigna and CIFS are also found liable and shall pay to Claimants Gage and Gage IRA the further amount of \$3,500,000.00 as punitive damages. This Panel hereby awards such punitive damages pursuant to its determination that Respondents Cigna and CIFS violated Florida laws relating to breach of fiduciary duty, negligence, gross negligence, negligent supervision and common law fraud. This Panel finds that the actions and inactions of Respondents Cigna and CIFS constituted a willful, wanton and methodical scheme to deceive Claimants. This Panel bases its authority to award punitive damages on the Federal Arbitration Act and the case law interpreting that Act.

3. Claimants' requests for treble damages, costs and attorneys' fees are denied.

4. No allocation is being made between the two Claimants with respect to this award, since Gage is essentially the sole party in interest with respect to Gage IRA. Further, both Claimants and Respondents in most respects treated the two Claimants as identical.

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 \$59,000.00 (2 pre-hearing conferences x \$1,000.00 plus 57 sessions x 1,000.00 per session). Claimants are hereby assessed \$23,250.00 for which the NASD shall retain the \$23,250.00 previously deposited in full satisfaction thereof. Respondents Cigna and CIFS are hereby assessed \$35,750.00, jointly and severally, for which the NASD shall retain the \$31,500.00 previously deposited by Respondent Cigna in partial satisfaction thereof, leaving a balance due and owing in the amount of \$4,250.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

15/
William R. Paul

Public

15/
James A. Connack

Public

15/
Regar Mickler

Industry

Date of Decision: March 10, 1992