

FL

Arbitration

N.A.S.D. AWARD

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Albert Jeffers)

Case No. 90-01527

Name of Respondent(s))

Graystone Nash, Inc.)

Stephen B. Kaplan)

Thomas Ackerly)

Glen Desort)

John Calabria)

REPRESENTATION

For Claimant, Albert Jeffers ("Jeffers"): Russell L. Forkey, Esq. of The Law Offices of Russell L. Forkey.

For Respondents, Graystone Nash, Inc. ("Graystone") and Thomas Ackerly ("Ackerly"): Lester Morse, Esq. of the Law Offices of Lester Morse, P.C.

Respondents, Stephen B. Kaplan ("Kaplan"), Glen Desort ("Desort") and John Calabria ("Calabria"): were pro se.

CASE INFORMATION

Statement of Claim filed: May 29, 1990 and amended on April 18, 1991.
Claimant's Submission Agreement signed: June 20, 1990.

Respondents' Graystone and Ackerly's, Statement of Answer filed: August 28, 1990. Respondent, Calabria's, Statement of Answer filed July 15, 1991. Respondent, Desort's, Statement of Answer filed August 15, 1991. Respondent, Kaplan's, Statement of Answer filed on March 28, 1991. Respondents' Submission Agreements signed by Ackerly August 2, 1990, Desort on August 8, 1991, Kaplan on August 1, 1991, and by Thomas Ackerly of behalf of Graystone on August 7, 1990. Respondent, Calabria, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code, Respondent, Calabria being a person associated with an NASD member firm, Graystone, at the time this controversy arose.

HEARING INFORMATION

On February 24, 1992, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for breach of contract; fraud and deceit; breach of fiduciary duties; negligence and negligent supervision. Claimant alleged that Respondents misrepresented the safety of certain penny stocks and, through such misrepresentations, induced Claimant into purchasing such stocks which were unsuitable for Claimant in light of his investment objectives. Claimant also alleged that Respondents charged excessive mark-ups and manipulated the price of said stocks.

Respondent, Graystone and Ackerly, denied all allegations of wrongdoing and alleged that the stock prices could not have been manipulated since there were other market makers; Claimant could have liquidated his positions at a profit; Claimant had the ultimate decision to buy or sell stocks since the account was non-discretionary; Claimant failed to mitigate his damages and Ackerly was not a shareholder of Graystone but only an officer and, as such, cannot be held liable.

Respondent, Desort denied all allegations of wrongdoing and alleged that he had no control over the market prices and never dealt with Mr. Jeffers.

Respondent, Kaplan, denied all allegations of wrongdoing and alleged that Claimant was suitable for the investments; the spreads were reasonable; there was no manipulation of the price since there were other market makers; and market conditions caused Claimant's losses.

Respondent, Calabria, denied all allegations of wrongdoing and alleged that he was not the branch manager at the time Claimant had his account with Graystone. Respondent, Calabria was dismissed with prejudice from the Claim without objection.

RELIEF REQUESTED

Claimant requested damages in the amount of \$25,000.00, plus punitive damages of \$25,000.00, interest, costs, attorney's fees and such other relief as the arbitrators deem appropriate.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code").
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, This Panel finds service on and adequate Notice to Respondents, Graystone and Ackerly. The NASD has made every attempt to locate and serve Respondents, Graystone and Ackerly, with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

3. Pursuant to Respondent, Calabria's, request this Panel dismissed Calabria, with prejudice, from this case without objection from the Claimant.

4. Claimant and Respondents, Kaplan and Desort, 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, these 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 and Respondents, Graystone and Ackerly, neither appearing at the hearing nor requesting an adjournment thereof, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Graystone, Ackerly and Desort, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$34,500.00, inclusive of interest.
2. Respondent, Kaplan, is found liable and shall pay to the Claimant the amount of \$500.00.
3. Claimant's request for attorney's fees, costs and 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

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (two sessions x \$400.00 per session). Claimant is hereby assessed \$160.00 for which the NASD shall retain the \$380.00 previously deposited in full satisfaction thereof. Respondents, Graystone, Ackerly, Kaplan and Desort are hereby assessed \$640.00, jointly and severally, \$220.00 of which shall be paid directly to the Claimant, and \$420.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain the \$120.00 non-refundable filing previously deposited by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
Casey W. Mills, Esq.

Public

/s/
Leon J. Steiner

Industry

Dissenting Arbitrator Signature

Arbitrator, Monica I. Salis, dissents as to paragraph #2 of the Award and otherwise concurs in the decision.

/s/
Monica I. Salis, Esq.

Public

Date of Decision: April 14, 1992