

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

NORMAN O. MEYERS

Claimant

and

NASD NO. 90-02737

ROTAN MOSLE, INC.
MICHAEL KAVANAGH

Respondents

REPRESENTATION OF PARTIES

Claimant Norman Meyers was represented by Martin Fletcher, Esq. of Rothberg, Gallmeyer, Fruechtenicht and Logan of Ft. Wayne, Indiana.

Respondent Rotan Mosle, Inc. was represented by Joseph A. Vallo, Esq. of PaineWebber, Inc., Weehawken, New Jersey. Respondent Michael Kavanagh was represented by Francis X. Stone, Esq., Boston, Massachusetts.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about November 6, 1990, Claimant Norman Meyers ("Meyers") alleged that he was convinced to purchase shares of Hilton Hotel stock from Respondent Michael Kavanagh ("Kavanagh"), broker for Respondent Rotan Mosle, Inc. ("Rotan") through representations, which Meyers further alleged such representations were later determined to be untrue.

More specifically, Meyers alleged that Kavanagh had a friend who had informed Kavanagh that Hilton Hotel was going to be merged or acquired. Kavanagh shared this information with Meyers, stating that his friend had given him reliable information in the past. Meyers further alleged that Kavanagh said he himself had invested heavily in Hilton Hotel, that the price of Hilton Hotel stock would be at least \$105 per share, and that the price of Hilton stock would be sure to rise to \$118 per share due to the merger or acquisition.

Meyers alleged that after he purchased the stock, it began to fall in value, and eventually Meyers had to sell his shares of Hilton Hotel stock at a loss.

In a Statement of Answer filed with the NASD on or about December 25, 1990 by Respondent Rotan Mosle, Inc. and in a Statement of Answer filed by Respondent Kavanagh on or about April 24, 1991, each denied the allegations set forth in the claim.

Kavanagh alleged that the reports on the value of Hilton stock were public information and denied making the representations Meyers alleged in his claim, alleging that such assertions were blatantly false and libelous.

Rotan Mosle alleged that Hilton Hotel stock was an attractive investment and that they acted in a proper, prudent, and professional manner and in accordance with all acceptable brokerage procedures.

RELIEF REQUESTED

Claimant Norman Meyers requested actual damages in the amount of \$36,587.03, interest at 8%, plus reasonable attorney's fees.

Respondent Rotan Mosle requested that Meyer's Statement of Claim be dismissed in its entirety and that costs be assessed against Meyers.

Respondent Kavanagh in his counterclaim requested that he be awarded \$25,000 for lost production time, and emotional distress, punitive damages in the amount of \$100,000, plus attorney's fees, all costs, and expenses.

OTHER ISSUES

At the oral hearing, Respondent Kavanagh voluntarily dismissed the counterclaim for fraud, deceit and libel.

PROCEDURAL MATTERS

On July 23 and July 24, 1991 in Indianapolis, Indiana during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on or about October 1, 1990 by Claimant Norman Meyers, on April 24, 1991 by Michael Kavanagh, and on December 27, 1990 by Stephanie Morse-Shamosh on behalf of Respondent PaineWebber, Inc.

At the hearing before the panel, Respondent Kavanagh Motioned For Leave To Amend his Counterclaim To Add A New Count For Slander which the panel subsequently denied without prejudice. The panel was not ruling on the merits of the proposed counterclaim.

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

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Michael Kavanagh and Rotan Mosle, Inc., jointly and severally, shall be and hereby are liable for, and shall pay to the Claimant nominal damages in the amount of One Dollar (\$1.00) as to transaction number one in the Statement of Claim; and


2. Respondents Michael Kavanagh and Rotan Mosle, Inc., jointly and severally, shall be and hereby are liable for and shall pay to the claimant attorney's fees in the amount of \$6,000 on the basis of the award set forth above, pursuant to Ind. Code Section 23-2-1-19; and

3. The parties shall each bear their own costs and expenses other than those specifically enumerated herein; and

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee in the amount of \$120.00 and the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant. Respondents, jointly and severally, shall reimburse to the Claimant the \$520 which was previously deposited with the NASD. Respondents, jointly and severally, shall pay to the NASD additional forum fees in the amount of \$1500.

DATED:

S/S



B. Keith Shake, Esq.
Presiding Chair
Public Arbitrator

S/S

Bruce Jones
Public Arbitrator

S/S

Bernard Lally
Industry Arbitrator

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Michael Kavanagh and Rotan Mosle, Inc., jointly and severally, shall be and hereby are liable for, and shall pay to the Claimant nominal damages in the amount of One Dollar (\$1.00) as to transaction number one in the Statement of Claim; and

2. Respondents Michael Kavanagh and Rotan Mosle, Inc., jointly and severally, shall be and hereby are liable for and shall pay to the claimant attorney's fees in the amount of \$6,000 on the basis of the award set forth above, pursuant to Ind. Code Section 23-2-1-19; and

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DATED:

12-15-91

S/S

B. Keith Shake, Esq.
Presiding Chair
Public Arbitrator

S/S

Bruce Jones
Bruce Jones
Public Arbitrator

S/S

Bernard Lally
Industry Arbitrator

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Michael Kavanagh and Rotan Mosle, Inc., jointly and severally, shall be and hereby are liable for, and shall pay to the Claimant nominal damages in the amount of One Dollar (\$1.00) as to transaction number one in the Statement of Claim; and

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3. The parties shall each bear their own costs and expenses other than those specifically enumerated herein; and

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee in the amount of \$120.00 and the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant. Respondents, jointly and severally, shall reimburse to the Claimant the \$520 which was previously deposited with the NASD. Respondents, jointly and severally, shall pay to the NASD additional forum fees in the amount of \$1500.

DATED:

S/S

B. Keith Shale, Esq.
Presiding Chair
Public Arbitrator

S/S

Bruce Jones
Public Arbitrator

11-22-91

S/S

Edward Lally
Industry Arbitrator