

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Kingsley B. Ellingson and Norma E. Ellingson

Claimants

and

90-02888

Jerol L. O'Hagan, Pagel, Inc., Equity Securities Trading Company et al

Respondents

REPRESENTATION OF PARTIES

Claimants Kingsley B. Ellingson and Norma E. Ellingson appeared and were represented by Donald Fraley, Esq. of Wayzata, Minnesota.

Respondent Summit Investment Corporation was represented by Robert E. Abrams, Esq. of Summit Investment Corporation, Minneapolis, Minnesota. Respondent McClees Investment Inc. c/o Miller, Johnson, Kuen, Inc. was represented by Michael T. Mahon of Miller, Johnson, Kuen, Inc., Minneapolis, Minnesota. Respondent Jerol L. O'Hagan appeared and was represented by Robert L. Lowe, Esq. of Lowe, Schmidhuber & Lindell, Minneapolis, Minnesota.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 16, 1990, claimants Kingsley and Norma Ellingson ("Ellingson") alleged that respondent Jerol L. O'Hagan ("O'Hagan") acted without authorization in investing for Ellingson and furthermore, the investments were unsuitable and high risk and not in accordance with Ellingson's investment objectives. Ellingson further alleged that respondents Pagel, Inc., Summit Investment Corporation, McClees Investment, Inc., and Equity Securities Trading Company, did not adequately supervise O'Hagan and should have recommended less risky investments in the retirement accounts of low income investors who did not have the ability to recover from loss in value. Ellingson alleged that O'Hagan, without further authorization, invested Ellingson's retirement funds in penny stocks and subsequently, the value of the retirement accounts have decreased as a result of O'Hagan's and the other respondent's actions.

Respondent Equity Securities Trading Company filed an answer with the NASD on or about March 4, 1991 and denied any responsibility for the claim, alleging that their function was as clearing broker/dealer and had no connection, other than bookkeeping and cashiering functions between Ellingson and O'Hagan. In conjunction with their answer, Equity requested that they be removed as a party to the claim.

Respondent Summit Investment Corporation filed an answer with the NASD on or about March 15, 1991 and denied the allegations set forth in the claim. Summit denied the allegation that it failed to adequately supervise O'Hagan and furthermore alleged that Ellingson preferred and endorsed the use of high risk securities in their self-directed IRA accounts.

Respondent Miller, Johnson & Ruen filed an answer with the NASD on or about June 10, 1991 and generally denied the allegations in the claim. Respondent alleged that all transactions were authorized and the risks understood by Ellingson. Respondent further alleged that the claim is barred by the Statute of Limitations.

Respondent Jerol O'Hagan filed an answer with the NASD on or about March 18, 1991 and denied the allegations of the claim. O'Hagan alleged that Ellingson authorized each and every transaction in their accounts. O'Hagan further alleged that Ellingson had stock market experience, and that Ellingson's were willing to give O'Hagan a try notwithstanding the fact that O'Hagan was primarily involved in local over-the-counter stocks in small and start-up companies which were high risk investments but at times did well.

OTHER ISSUES

Claimants voluntarily dismissed their claim against respondent Equity Securities Trading Company. Respondent Pagel, Inc. did not appear at the hearing, did not file a submission agreement, and did not file an answer with the NASD. Respondent Summit Investment Corporation filed a Motion To Dismiss pursuant to the Statute of Limitations; claimants filed an answer to this motion. Claimants Amended their claim to include Miller, Johnson, & Ruen as respondents.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$8539.28 plus interest and filing fees.

Respondent Equity Securities Trading Company, Inc. requested that they be removed from the arbitration. Respondents Summit Investment Corporation and McClees Investments, Inc. c/o Miller, Johnson & Ruen requested that the claim be dismissed. Respondent Jerol O'Hagan requested that the claims be dismissed, that claimants be awarded nothing, and that O'Hagan be awarded attorney's fees, costs, and disbursements.

PROCEDURAL MATTERS

On November 8, 1991 in Minneapolis, Minnesota during a hearing lasting a total of two sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on October 12, 1990 by Claimants Kingsley and Norma Ellingson, on February 25, 1991 by Nathan Newman on behalf of Respondent Equity Securities Trading Company, on March 15 1991 by Robert Abrams on behalf of Respondent Summit Investment Corporation, on June 7, 1991 by Michael Mahon on behalf of Miller, Johnson & Ruen, Inc., and on March 15, 1991 by Jerol O'Hagan.

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 remains on file with the NASD.

AWARD

The arbitrator, 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. The motion to dismiss by respondent Summit Investment Corporation shall be and hereby is denied;
2. Respondents Summit Investment Corporation and Jerol L. O'Hagan are jointly and severally liable for and shall pay to the claimants Kingsley and Norma Ellingson the sum of \$6047.81 in actual damages and \$2178 in interest;
3. Respondent Miller, Johnson & Kuen, Inc. is liable for and shall pay to the claimants Kingsley and Norma Ellingson the sum of \$500 in actual damages and \$150 in interest;
4. Each party shall bear its own costs, expenses, and attorney's fees incurred in the arbitration other than those specifically enumerated herein;
5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$75 and shall retain the hearing session deposit in the amount of \$200 previously deposited with the NASD by the Claimants. Respondent Jerol L. O'Hagan shall pay to the NASD additional forum fees in the amount of \$100. Respondent Summit Investment Corporation shall pay to the NASD additional forum fees in the amount of \$100.

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

Dated:

Dec. 13, 1991



George A. Beck, Esq.
Presiding Chair
Public Arbitrator