

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Sheldon R. Galster and Gail R. Galster Jtwros

Claimant

90-02972

and

Mark Musaraca

Respondents

REPRESENTATION OF PARTIES

Claimants Sheldon R. Galster and Gail R. Galster appeared pro se.

Respondent Mark Musaraca was present and was represented by Ronald H. Ziller, Esq. and James Apaia, Esq.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 19, 1990 Claimants Sheldon R. Galster and Gail R. Galster alleged breach of fiduciary duty through Respondent Mark Musaraca's "Respondent" failure to timely execute an order placed on October 20, 1987 to buy 400 shares of ARCO at 62 to Cover Claimants short position. The order was placed at 11:05 a.m. Claimants were not notified until October 21, 1987 that their trade had not been made. Claimants then made a request that an investigation be made into this matter. It was never undertaken. Claimants placed a new order to buy ARCO shares at 110 1/4 on December 11, 1989.

In a Statement of Answer filed with the NASD on or about January 16, 1991, Respondent denied each and every claim made by the Claimants in their Statement of Claim. In addition, Respondent stated the following affirmative defenses:

1. Respondent was not the account executive who opened Claimants' accounts, nor did he place the order to buy back the 400 ARCO shares on October 20, 1987;

2. Respondent was a broker at a discount brokerage firm, and therefore did not breach any fiduciary duty owed to the Claimants;
3. Respondent can not be held liable for the broker-dealer's failure to execute and order placed by a customer;
4. Claimants are very sophisticated and experienced traders;
5. Claimants had a duty to mitigate their damages;
6. Claimants are stopped from asserting any claims against Respondents;
7. Claimants are required to file their demand for Arbitration within one year of the date that they first learned of the alleged fraud; and,
8. Claimants are required to allege scienter in connection with their claims.

OTHER ISSUES

Both Respondent and Claimants asked the panel to waive their postponement fees on this case in the respective amounts of \$300.00 and \$400.00. After hearing the parties reasoning, and deliberation, the panel decided to take this matter up in the Award.

Respondent made a Motion to Dismiss at the beginning of claimant's case. After hearing argument, and deliberation, the panel decided to take this motion under advisement until drafting the Award.

Respondent made his second Motion to Dismiss at the close of claimants case. After hearing arguments and deliberation, the panel denied the motion and proceed with the case.

RELIEF REQUESTED

Claimant requested that the panel award to them the sum of \$23,100.00 against the Respondent.

Respondent requested that the panel deny Claimants' claim in its entirety.

PROCEDURAL MATTERS

On October 21, 1991 in Chicago, Illinois during a hearing lasting a total of two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 17, 1990 by Claimants Sheldon R. Galster and Gail R. Galster on January 10, 1991 by Respondent Mark Musaraca.

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. Respondent Mark Musaraca's Motion to Dismiss is hereby denied and dismissed;
2. Claimants Sheldon R. Galster and Gail R. Galster's claim against Respondent Mark Musaraca is hereby denied and dismissed;
3. The postponement fees heretofore paid to the NASD by both the Claimants Sheldon R. Galster and Gail R. Galster, and Respondent Mark Musaraca shall not be refunded; and
4. Respondent is liable for all forum fees as follows:
 - a. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee in the amount of \$100.00 and shall retain the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant; and,
 - b. Respondent Mark Musaraca is liable to and shall pay to Claimants, Sheldon R. and Gail R. Galster, the sum of \$400.00 which constitutes the initial hearing session deposit and filing fee in this matter.

- c. Respondent Mark Musaraca is liable to and shall pay to the NASD pursuant to Section 43(c) of the Code of Arbitration procedure the sum of \$400.00 for the additional hearing session deposit in this case.

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

Dated:

11-12-91

s/s

Warren P. Landsman, Esq.
Presiding Chair
Public Arbitrator

11-9-91

Bradford S. Allen
Public Arbitrator

11-9-91

Scott L. Downs
Industry Arbitrator

NASD Served - 11-22-91