

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Nicholas Dale Mostert)

Name of Respondent(s))

Christopher Kane)

H. Turney Fletcher)

Thomas Bare, II)

Case No. 90-03177

REPRESENTATION

Claimant, Nicholas Dale Mostert ("Mostert") was pro se.

Respondents, Christopher Kane ("Kane"), H. Turney Fletcher ("Fletcher") and Thomas Bare II ("Bare") were pro se.

CASE INFORMATION

Statement of Claim filed on: November 9, 1990.

Claimant's Submission Agreement signed on: November 2, 1990.

Respondent, Kane's, Statement of Answer filed on: February 14, 1991 and Respondent, Bare's, Statement of Answer filed on: May 28, 1991. Respondent, Fletcher did not file a Statement of Answer and Respondents, Kane, Fletcher and Bare, did not sign Submission Agreements as required by Sections 12 and 25 of the Code, Respondents, Kane, Fletcher and Bare, being persons associated with an NASD member firm at the time this controversy arose.

HEARING INFORMATION

On December 2, 1991, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for misrepresenting that certain stocks were good purchases; failing to advise that the stocks were declining in value; churning; and, unauthorized trading.

Respondent, Bare, denied all allegations of wrongdoing but did not appear at the hearing.

Respondent, Kane, alleged that he was not the Christopher Kane who dealt with Claimant and was not employed with Stuart James during the period in question.

Respondent, Fletcher, failed to file an Answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in the amount of \$8,569.00, plus treble damages and costs.

Respondent, Bare and Kane, requested dismissal of the Claim.

Respondent, Fletcher failed to file an Answer.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure and pursuant to the forms U-4 executed by Respondents, Kane, Fletcher and Bare.
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this arbitrator finds service on and adequate notice to Respondents, Fletcher and Bare. The NASD has made every attempt to locate and serve Respondents, Fletcher and Bare, with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.
3. This arbitrator finds that, from the evidence presented, he is unable to make a determination whether the Christopher Kane who was served with the Claim is the same Christopher Kane whom Claimant dealt with and named in his Statement of Claim. Therefore, this arbitrator hereby dismisses the Claims against Christopher Kane without prejudice.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and Respondents, Fletcher and Bare, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding their knowledge of this arbitration as evidenced in the records of proceedings and Arbitrator's Exhibits #1 and #2, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Fletcher, is found liable and shall pay to the Claimant the amount of \$4,185.00.
2. Respondent, Bare, is found liable and shall pay to the Claimant the amount of \$2,605.00.
3. Claimant's request for treble damages is denied.

OTHER COSTS

1. Respondents, Fletcher and Bare, are also found liable, jointly and severally, and shall pay to Claimant the further amount of \$50.00 for costs incurred by Claimant in travelling to the hearing.
2. 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 Arbitrator has assessed forum fees in the amount of \$600.00 (two sessions x \$300.00 per session). Respondents, Fletcher and Bare, are hereby assessed \$600.00, jointly and severally, \$300.00 of which shall be paid directly to the Claimant, and \$300.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain the \$300.00 previously deposited by Claimant in partial satisfaction thereof. Additionally, Respondents, Fletcher and Bare are hereby assessed the \$100.00 non-refundable filing fee which shall be payable to Claimant. The NASD shall retain the \$100.00 previously deposited by Claimant in full satisfaction of said non-refundable filing fee.

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

Arbitrator's Signature

Name

Robert Hershmann
Robert Hershmann, Esq.

Public

Date of Decision: December 6, 1991