

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Kyohei and Michie Murakami

Claimants

vs.

PaineWebber, Inc. &
Vincent Serhan

Respondents

AWARD

NASD #90-03620

REPRESENTATION

Claimants were represented by David N. Mahler, a representative of Mahler & Associates, Newport Beach, California. Respondents were represented by Scott A. Ratchick, Esq., PaineWebber, Inc., Los Angeles, California.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on December 26, 1990. Claimants alleged that the purchase of 1,000 shares of ABM Gold Corp., Class A ("ABM") in their account was unauthorized, and that Respondents failed to execute an order to liquidate 1,000 shares of ZZZZ Best Co. for at least seven dollars per share as instructed.

Respondents denied the allegations and maintained that Claimants placed an order to purchase ABM and did not complain of the investment until three years after the transaction occurred, and that Claimants did not place an order to sell their position in ZZZZ Best Co. in May 1987 as alleged.

Respondents filed a counterclaim in this matter against Kyohei Murakami which was received by the arbitrator at the hearing in accordance with Section 39 of the Code of Arbitration Procedure. The counterclaim alleged that Murakami electronically recorded a confidential telephone communication between himself and Respondent Serhan without permission or consent in violation of Section 632(a) of the California Penal Code, and are entitled to damages as provided by Section 637.2 of the California Penal Code.

DAMAGES AND RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$13,550, interest at ten percent on the sum of \$16,300 which includes margin interest, and reimbursement of the filing and hearing session fees paid to initiate this claim. Claimants amended their damages claim at the hearing to include attorney's fees.

Respondents requested dismissal of the claim in its entirety, and recovery of costs and attorney's fees.

Respondents requested damages on their counterclaim asserted against Claimant Kyohei Murakami in the statutory amount of \$3,000, and unspecified punitive damages.

PRE-HEARING CONFERENCE

On August 1, 1991 a pre-hearing conference was held in accordance with Section 32 of the Code of Arbitration Procedure via telephone conference call which lasted one (1) session.

PROCEDURAL ISSUES

On August 7, 1991 the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on December 14, 1990 and on behalf of Respondent PaineWebber, Inc. on March 13, 1991. Respondent Vincent Serhan did not file a Submission Agreement but is subject to the jurisdiction of this forum pursuant to Sections 1 and 12 of the Code of Arbitration Procedure, and appeared at the arbitration hearing.

The hearing was conducted in Los Angeles, California and lasted two (2) sessions.

DAMAGES AND RELIEF AWARDED

The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted as follows:

1. Claimants are awarded the sum of Two Thousand Dollars and Zero Cents (\$2,000.00) representing compensatory damages assessed against Respondents jointly and severally.

2. Claimants are further awarded interest at ten percent (10%) on \$2,000 calculated from June 8, 1987 until the date the award is satisfied, assessed against Respondents jointly and severally.

3. The claim for attorney's fees asserted by Claimants' representative is denied.

4. All counterclaims are denied including punitive damages, costs and attorney's fees.

5. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$500 filing fee and hearing session deposit previously paid by the Claimants.

OTHER ISSUES

None.

DATE SERVED: 08/14/91