

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Charles Zaidan )

Name of Respondent(s) )

G.K. Scott & Co., Inc. )

Robert Roberts )

Tim Ciraulo )

Case No. 91-00658

Heard before the arbitrator:

Robert Herschmann, Esq.

Public

REPRESENTATION

Claimant, Charles Zaidan ("Zaidan"), was represented by Mitchell T. McRae of Mitchell T. McRae, P.A.

Respondents, G. K. Scott & Co., Inc. ("G.K. Scott"), Robert Roberts ("Roberts"), and Tim Ciraulo ("Ciraulo"), were represented by William S. Isenberg of Latona & Isenberg.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 27, 1991 and amended on July 5, 1991. Claimant alleged that he was an unsophisticated investor with a tenth grade education; that he relied totally on the advice and expertise of his nephew Roberts, an account executive at G.K. Scott; that Respondents were advised that Claimant wanted income with total safety and a better return than a CD; that Respondents made misrepresentations of and omitted to state material facts; made unauthorized trades on margin in penny stocks and index options; that Respondents' actions constituted breach of fiduciary duty; negligent misrepresentation, negligent supervision, and violation of Section 10(b) of the Exchange Act and Section 517.301, Florida Statutes.

Respondents filed a Statement of Answer with the NASD on April 15, 1991. Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of failure to mitigate damages; failure to use due diligence; losses caused by Claimant's own actions; no proximate cause; bar by unclean hands; bar by comparative negligence; and, good faith of Respondents.

#### RELIEF REQUESTED

Claimant requested damages, jointly and severally, in the amount of \$24,033.00, interest at the legal rate from February 4, 1991, attorney's fees, punitive damages, costs and other relief.

Respondents requested dismissal.

#### AWARD

On August 20, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 7, 1990; by Respondents, Ciraulo and Roberts, on April 5, 1991; and signed on April 5, 1991, by Fred Cirillo on behalf of Respondent, G.K. Scott.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.
2. Respondents are found liable, jointly and severally, and shall pay to the Claimant the amount of \$14,408.89, plus interest at the legal rate of 12% per annum from February 4, 1991 to date of Award in the amount of \$933.22 for a total due to the Claimant of \$15,342.11.
3. Claimant's requests for attorney's fees and punitive damages are denied.

#### FORUM FEES

1. 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). Claimant is hereby assessed \$100.00 for which the NASD shall retain \$100.00 of the funds previously deposited in full satisfaction thereof. Claimant shall be reimbursed for \$200.00 of this deposit as set forth below. Respondents are hereby assessed \$500.00, jointly and severally, \$200.00 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.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

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

OTHER ISSUES

None.

Arbitrator's Signature

Robert Herschmann  
Robert Herschmann, Esq.

Date of Decision: 8/22/91