

Book

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Leon Greenblatt

91-00717

Name of Respondent

Raffensperger, Hughes & Company

REPRESENTATION

For Claimant: Michael B. Roche, Esq. and L. Andrew Brehm, Esq. of Schuyler, Roche & Zwirner.

For Respondent: Robert S. Steigerwald, Esq. and Roger Taylor, Esq. of Kirkland & Ellis.

CASE INFORMATION

Statement of Claim filed: 03/07/91

Claimant's Submission Agreement signed on: 03/05/92.

Statement of Answer filed by Respondent, Raffensperger, Hughes and Company on: 04/25/91.

Respondent, Raffensperger's, Submission Agreement signed on: 04/22/91.

Claimant's, Greenblatt, Amended Statement of Claim filed: 03/09/92.

Respondent's, Raffensperger, Response to Claimant's Request for Leave to Amend His Statement of Claim filed on 03/10/92.

HEARING INFORMATION

Pre-Hearing Conference: November 26, 1991 for one (1) session.

Hearing Dates/Sessions: March 11, 1992 for two (2) sessions;

March 12, 1992 for two (2) sessions;
April 02, 1992 for two (2) sessions;
April 03, 1992 for two (2) sessions.

Hearing Location: Chicago, IL

CASE SUMMARY

Claimant, Leon Greenblatt ("Greenblatt"), alleged that respondent, Raffensperger, Hughes & Company ("Raffensperger"), acted fraudulently pursuant to sec. 10 (b) and sec. 15 (c) of the Securities Act of 1934 when Raffensperger allegedly utilized non-public information concerning an impending take-over to purchase Greenblatt's stock. Greenblatt further alleged that Raffensperger breached its fiduciary duty by exploiting confidential information for its own benefit.

Greenblatt alleged that he sold 500 of his 24,739 shares of Fayette Federal Savings Bank on March 6, 1990 which allegedly was subsequently sold to Raffensperger. One day later, on March 7, 1990, it was alleged that Raffensperger (which was alleged to have been an investment advisor to Fayette Federal Savings Bank) purchased 6500 shares of Fayette stock at \$13.75 a share from Greenblatt through Geldermann Securities, Inc. ("Geldermann"). Greenblatt had alleged that Gelderman was acting as an agent for him. Further, it was alleged that on March 8, 1990, Raffensperger bought Greenblatt's remaining 17,739 shares of Fayette for \$13.50 a share. Greenblatt also alleged that on March 23, 1990, First Financial Bancorp of Monroe, Ohio ("First Financial") announced that it had signed an agreement to make Fayette an affiliate in a share for share exchange under which Fayette shareholders would receive First Financial stock worth \$29.91 for each share of Fayette stock. Trading in Fayette was then temporarily halted. When trading in Fayette stock resumed on March 26, 1990, Greenblatt alleged that the stock was up more than \$5 per share from the price prior to the announcement.

In its Statement of Answer, Raffensperger denied the allegations contained in the Statement of Claim. Raffensperger responded to the allegations by stating that it had a reasonable procedure that was in effect March 1990, which was consistent with standard industry practice, to prevent its staff from learning of or trading on securities. Raffensperger went on to allege that there was no basis for fraud because Greenblatt had no factual basis for alleging the Raffensperger's procedures were not followed, or that the traders had knowledge of any material,

Respondent denied that the purchase was unauthorized or that there was a waiver of notice. Respondent alleged that claimant is sophisticated and an experienced trader, and asserted several affirmative defenses, including ratification, estoppel and failure to mitigate.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$13,879.00; and
2. Interest on the above amount.

OTHER ISSUES CONSIDERED & DECIDED

None.

AWARD

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

1. All claims are dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.


FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by the claimant.

ARBITRATION PANEL

Name
Joseph J. Aron, Esq.

Public/Industry
Public


Joseph J. Aron, Esq.

DATE SERVED: 02/07/92

Date of Decision: Dec 8, 1991

N.A.S.D. Disciplinary Referral

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Leon Greenblatt

No. 91-00717

Name of Respondent

Raffensperger, Hughes & Company, Inc.

The panel of arbitrators named below conducted hearings March 11 and 12, and April 2 and 3, 1992. In light of the evidence and testimony presented at the hearing, the panel wishes to make a disciplinary referral with respect to any actions taken by respondent Raffensperger, Hughes & Company.

Concurring Arbitrators:

Date:

July 23, 1992

/s/John W. Jerak
John W. Jerak
Chairman
Public Arbitrator

July 22, 1992

/s/Mary Beth Wheeler
Mary Beth Wheeler
Public Arbitrator

July 16, 1992

/s/Sanford P. Prizant
Sanford P. Prizant
Industry Arbitrator

2. Each party shall bear their own costs of arbitration including attorneys' fees except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 pre-hearing conference session x \$300.00 = \$300.00

8 hearing session x \$750.00 = \$6,000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00 and shall refund the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant, Leon Greenblatt.

Additional forum fees in the amount of \$6,300.00 are assessed against Respondent, Raffensperger, Hughes & Co.

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

Concurring Arbitrators' Signatures

Date:

July 23, 1992

/s/John W. Jerak
John W. Jerak
Presiding Chairman
Public Arbitrator

July 22, 1992

/s/Mary Beth Wheeler
Mary Beth Wheeler
Public Arbitrator

July 16, 1992

/s/Sanford P. Prizant
Sanford P. Prizant
Industry Arbitrator

non public, information. Finally, in regards to the amended claim's damage request, Raffensperger claims that the formula used to compute the figure is based on a formula that is not allowed under the law.

RELIEF REQUESTED

Claimant requested in his first claim: Damages in the amount of \$195,912 (this number represents the difference between the take over bid and the amount paid by Raffensperger for the stock); reasonable costs and attorney fees; and "anything else that the panel deemed appropriate."

Claimant then amended his claim and requested damages in the amount of \$398,059.89 (which represented the difference between a) the prices at which Greenblatt's sales of his Fayette stock were made and b) the \$29.91 value of the First Financial shares exchanged for each share of Fayette stock). Claimant also asked for interest on the \$398,059.89 amount which brought the requested damage amount to \$437,865.79.

Respondent requested that Greenblatt's claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 originals remain on file with the NASD.

AWARD

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

1. Claimant's, Leon Greenblatt, claims are hereby denied and dismissed with prejudice.