

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
Charles E. Anderson :
Claimant :
vs. : CASE #91-00862
Kochcapital : AWARD
Philip C. Mullan :
Darren M. Marks :
Stanley Rosenstock :
Respondents :

CASE SUMMARY

Charles E. Anderson, by his attorney Linda M. Granata, Miami Beach, FL, in a claim filed with the National Association of Securities Dealers, Inc. on March 18, 1991, alleged that Respondent Philip C. Mullan, a registered representative of Kochcapital misrepresented and omitted pertinent facts concerning the value and liquidity of Unifirst Corp., CA. Claimant continues that Mr. Mullan failed to execute his sell order on August 23, 1990 at 1 3/8 and when the sale was completed on November 15, 1990, the price had fallen to 5/8. Claimant states that Darren Marks, as sales manager and Stanley Rosenstock as supervisor, failed to properly oversee the activities of Mullan and that Kochcapital failed to properly supervise its employees. Claimant alleged that Unifirst was not a suitable investment in view of his objectives and that Respondents were negligent in handling his account.

Respondent, Philip C. Mullan, Pro Se, maintained that Claimant was fully aware of all risks involved in investing in development stage companies and that purchases were made with the full knowledge and consent of Claimant. Mr. Mullan confirms that his termination from Kochcapital was voluntary, that he acted properly within NASD and SEC rules and asserts a Motion to Dismiss.

Respondent, Darren Marks, Pro Se, maintained that he was an associated person and not a supervisor or principal of Kochcapital. He states that Claimant's New Account Data Sheet indicates that he was a Quality Control Manager, not a sales representative for electronics companies and that on the day Anderson claims the Unifirst was to be sold at 1 3/8, the trade blotter for the Deerfield Beach, FL office discloses that Unifirst was sold by the

firms clients at 1 (one). He states that Claimant has failed to show negligence and asserts a Motion to Dismiss.

Respondent, Stanley Rosenstock, Pro Se, maintains that the person responsible for the registered representatives was Donald W. Jones, V.P., Kochcapital, with day to day supervision of Mr. Mullan by Bradley Duppong. He affirms the defenses set forth by Mr. Marks and asserts a Motion to Dismiss.

Claimant provided a reply to the answers of Darren Marks and Stanley Rosenstock. On June 28, 1991 Claimant submitted a properly completed Uniform Submission Agreement stating the state and county of notarization, said information having been omitted from the original submission of the Agreement which had brought objection from the Respondent.

Stanley Rosenstock objected to the validity of the first Uniform Submission Agreement and to this second filing. He restated his Motion to Dismiss.

Kochcapital failed to respond to the original service of the Statement of Claim sent to it on March 26, 1991. The Statement of Claim was reserved on Kochcapital on July 25, 1991. Service was effected on July 29, 1991 as evidenced by the return of a signed, dated Certified Mail green card.

RELIEF REQUESTED

Claimant requests compensatory damages of Seven Thousand One Hundred Twenty-Five Dollars (\$7,125), interest at twelve percent (12%) from August 20, 1990, costs and attorney's fees.

Respondent Philip C. Mullan requests that the Claim against him be Dismissed and asserts a Motion so stating.

Respondent Darren Marks prays for relief from the frivolous allegations and asserts a Motion to Dismiss.

Respondent Stanley Rosenstock prays for relief from the Claim of Charles E. Anderson and asserts a Motion to Dismiss.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Janet Thomas Johnson, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on

June 20, 1991 and by the Respondent Philip C. Mullan on June 4, 1991, by Respondent Darren M. Marks on April 9, 1991 and by Respondent Stanley Rosenstock on May 11, 1991, but not by Respondent Kochcapital as required by Section 13(d) of the Code of Arbitration Procedure;

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That the Motion to Dismiss asserted by Respondents Darren M. Marks, Philip C. Mullan and Stanley Rosenstock is denied.
2. That the Claim of Charles E. Anderson against Darren Marks is dismissed.
3. That the Respondents Philip C. Mullan, Stanley Rosenstock and Kochcapital are jointly and severally liable and shall pay to the Claimant Charles E. Anderson the sum of Five Thousand Nine Hundred Thirty-Seven Dollars and Fifty Cents (\$5,937.50).
4. That Claimant's requests for interest, attorney's fees and costs are denied.
5. The One Hundred Fifty Dollar (\$150) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and is assessed jointly and severally against the Respondents Kochcapital, Philip C. Mullan and Stanley Rosenstock who shall pay One Hundred Fifty Dollars (\$150) to Charles E. Anderson.

AFFIRMATION

I, JANET THOMAS JOHNSON, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATED: November 4, 1991

Dated by the NASD, Inc.: November 19, 1991