

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Edward DiNardo :

Claimant :

vs. :

Paragon Capital Corporation
Tony Pinsonault :

Respondents :

CASE #91-01351
AWARD

CASE SUMMARY

Edward DiNardo by his attorney George F. Surgent, Mahwah, NJ, in a claim filed with the National Association of Securities Dealers, Inc. on April 30, 1991, alleged that Respondent Tony Pinsonault, his account representative at Paragon Capital Corporation, failed to follow his instructions to purchase 500 shares of common stocks in Club Theatre Network, Inc. at five dollars. Claimant states that instead, Mr. Pinsonault purchased 500 shares of said stock at 10 1/2 and another 500 shares at 9. Claimant affirms that he notified Mr. Pinsonault that these purchases were contrary to instructions and, therefore, unauthorized and to cancel the trades. Instead, he continues, the stocks were sold at 5 1/8 and 3 5/8 for a resulting loss in the customer's account. In June of 1990 Claimant alleged that Tony Pinsonault again executed an unauthorized trade of 1,000 shares of Med Phone Corp. Claimant concludes that Mr. Pinsonault continually affirmed that the discrepancies would be corrected and Paragon Capital Corp. denied responsibility.

Respondent, Paragon Capital Corporation by its Compliance Officer, Vincent M. Bruno, New York, NY, maintained that Mr. Pinsonault never informed Paragon of the alleged unauthorized purchases of HDTV stock for Mr. DiNardo's account. Paragon alleges that Mr. DiNardo sold his 200 shares of General Motors stock for the purpose of purchasing HDTV shares in the after market since there was no indication from Mr. Pinsonault's lists that Claimant expressed interest in the initial public offering.

They argue that if the trades in questions were unauthorized, why were the proceeds immediately sent to Claimant and not used to offset the debit in the account?

Tony Pinsonault failed to answer the Statement of Claim sent to him on May 23, 1991. The Claim was reserved on Mr. Pinsonault on August 28, 1991 and returned by the postal service following three attempts at service and marked "unclaimed". The Claim was sent by regular mail on September 5, 1991 and not returned. Tony Pinsonault failed to Answer the Statement of Claim.

REPORT OF ARBITRATOR

Claimant asserts he gave instructions to respondents to purchase 1,000 shares of Club Theatre Network, Inc. at a price of \$5.00 per share and that the order was instead executed at prices of \$9 and \$10.50 per share. Respondents do not deny that such an order was given nor do they offer any evidence contradicting claimant's statement on this point. Respondent Paragon Capital Corp. states, by way of explanation, that it was "unable to reach" its former registered representative "at his last known address". The file reveals, however, that Mr. Pinsonault has simply failed to respond to mail addressed to him. The difference between the price paid for the stock, \$9,765, and the price of \$5,000, which Claimant authorized, is \$4,765.

RELIEF REQUESTED

Claimant requests Eight Thousand Nine Hundred Six Dollars and Fifty Cents (\$8,906.50) in actual damages, commissions paid totalling One Thousand Three Dollars and Fifty Cents (\$1,003.50) plus attorney's fees and interest.

Respondent Paragon Capital Corporation requests dismissal of the Claim against it.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Roger J. Hawke, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions at Arbitration signed by the Claimant on April 24, 1991 and by the Respondent Paragon Capital Corporation on June 13, 1991;

And, that the Arbitrator, having considered by 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 Respondents Paragon Capital Corporation and Tony Pinsonault are jointly and severally liable and shall pay to the Claimant Edward DiNardo the sum of Four Thousand Seven Hundred Sixty-Five Dollars (\$4,765).
2. That all other Claimants were denied.
3. 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.

AFFIRMATION

I, ROGER J. HAWKE, 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: *October 11, 1991*

DATED BY THE NASD, INC.: October 23, 1991