

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Neal L. Ray :

Claimant :

vs. :

J. W. Gant & Associates, Inc. :
John Leniart :Respondents :
-----CASE #91-01371
AWARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 1, 1991, Claimant, Neal L. Ray, who appeared Pro Se, alleged that on February 16, 1991, Respondent John Leniart, a registered representative at Respondent, J.W. Gant & Associates, Inc., executed the sale of Claimant's 2500 shares of Action Staffing, Inc. without his authorization. Claimant further alleged that Respondent, John Leniart originally contacted him on February 13, 1991 to recommend that Claimant sell his Action Staffing, Inc. position and put the money in a money market fund. Claimant contended that during the February 13, 1991 conversation with Respondent, John Leniart, he told Respondent that he thought the stock was not doing well and was a "loser", but at no time did Claimant ask Respondent to sell the Action Staffing, Inc. position, instead, he advised Respondent he would contact him next week. Claimant further contended that Respondent, John Leniart failed to ascertain Claimant's investment goals and was only trying to secure a commission at the risk of an unauthorized sale. Claimant asserted that when he received the notice that Respondents, J.W. Gant & Associates, Inc. and John Leniart had sold his position in Action Staffing, Inc., he immediately notified Respondents of their error and requested they correct the situation. Claimant further asserted that he has repeatedly requested that Respondents put him back into the Action Staffing, Inc. position and they have failed to do this thus, resulting in a loss to Claimant.

Respondents, J.W. Gant & Associates, Inc. and John Leniart by and through their in-house counsel J. Patrick Driver, Esq., maintained that on February 13, 1991, Respondent, John Leniart recommended that Claimant, Neal L. Ray sell his 2500 shares of Action Staffing, Inc. and put the proceeds in a money market fund.

Respondents further maintained that Claimant informed Respondent, John Leniart that he thought the Action Staffing, Inc. stock was a "loser" and authorized the liquidation of the stock but did not instruct Respondent to make an investment in a money market fund, but rather, deferred a conversation as to a possible subsequent investment until the next week. Respondents contended that they sent the proceeds of the transaction to the Claimant and that Claimant returned the proceeds, which remain in his account as a free credit balance. Respondents further contended the Claimant only complained that the sale was unauthorized after the price of the stock rose. Respondents asserted that Claimant filed a complaint in reference to the Action Staffing, Inc. matter with the office of District Number 7 of the NASD and it was determined that no action was warranted. Respondents further asserted that if it is determined that Respondents are liable for somehow misinterpreting Claimant's instructions, the damages should be limited to the difference between Claimant's proceeds of the sale and 5% below the best inside bid for the stock.

RELIEF REQUESTED

Claimant, Neal L. Ray requested \$4,101.88 in actual damages.

Respondents, J.W. Gant & Associates, Inc. and John Leniart requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Roger E. Lautzenhiser, 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 April 23, 1991, by the Respondent J.W. Gant & Associates, Inc. on November 26, 1991 and by Respondent, John Leniart at December 17, 1991.


And, 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. Respondents, J.W. Gant & Associates, Inc. and John Leniart are jointly and severally liable and shall pay to the Claimant, Neal L. Ray the sum of \$570.00 in damages.
2. The parties shall bear their respective costs.

3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Neal L. Ray shall be retained by the NASD, Inc. Respondents, J.W. Gant & Associates, Inc. and John Leniart are jointly and severally liable and shall pay to the Claimant the sum of \$62.50 as partial reimbursement.

AFFIRMATION

I, ROGER E. LAUTZENHISER, 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

DATE OF DECISION: April 27, 1992