

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :

Lonnie G. Funderburke :

Claimant :

vs. :

CASE #91-01582
 AWARD

Malone & Associates, Inc. :

Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 21, 1992, Claimant Lonnie G. Funderburke who appeared Pro Se, alleged that Richard C. Avon, a registered representative with Respondent Malone & Associates, Inc. solicited him to purchase 48,000 shares of With Design In Mind International Inc. by misrepresenting its value and guaranteeing that he would double his investment within thirty days. Claimant further alleged that when he received his first monthly statement he was informed that the 48,000 shares of With Design In Mind International Inc. had been converted into 136 shares and that the investment had substantially decreased in value. Claimant contended that shortly thereafter he was advised that Respondent's registered representative, Matthew Dwyer would be handling his account. Claimant further contended that Respondent, by and through Matthew Dwyer, recommended the purchase of Energetics, Inc. whereby this purchase would put him in a better position to make up for Claimant's losses in the With Design In Mind International Inc. investment. Claimant asserted that he later received confirmations from Respondent showing trades of his holdings in Energetics, Inc. and purchases of Find/SVP Inc. and American Drug Screen's, Inc. without his knowledge or consent. Claimant further asserted that he contacted Respondent's customer service representative, Dough Baker to notify him of the unauthorized trades in his account and to instruct him to sell all his positions, at which time, Mr. Baker failed to execute these explicit instructions. Claimant argued that Respondent's unauthorized trading and inappropriate handling of his account resulted in substantial losses to Claimant.

Respondent, Malone & Associates, Inc. by and through their Chairman & President, Robert G. Malone, submits that they ceased conducting a securities business on January 23, 1991, and having

been liquidated they are currently dormant, in addition to being in the final stages of liquidation prior to dissolution. Respondent maintained that at all times Claimant Lonnie G. Funderburke was a client of their Fort Lauderdale branch office whereby the branch was a franchise and an Office of Supervisory Jurisdiction, under the direct supervision of Branch Manager, Principal and Owner, Richard Larew. Respondent further maintained that Claimant's account was opened by Richard C. Avon, a registered representative in the Fort Lauderdale office and after Mr. Avon's resignation, Claimant's account was handled by the Branch Manager, Mr. Richard Larew. Respondent contended that at all times Mr. Larew was an NASD Registered Representative who was solely responsible for the supervision of the Branch and registered representatives domiciled therein, pursuant to the term of the branch office agreement dated December 26, 1989. Respondent further contended that they cannot comment as to any conversations the Claimant may have had with persons located in the Fort Lauderdale Branch, nor were they aware these conversations actually took place and Mr. Avon, however, knew he could not in any way promise or guarantee a client would "double his money". Respondent asserted that the failure to execute any sell orders or other instructions allegedly given by the Claimant is the sole responsibility of Mr. Richard Larew, and in as much as Respondent was never aware of any such instruction being given by the Claimant. Respondent further asserted that at all times, did its utmost to supervise its Representatives to insure compliance with all applicable securities rules and regulations.

RELIEF REQUESTED

Claimant, Lonnie G. Funderburke requested \$5,800.00 in actual damages.

Respondent, Malone & Associates, Inc. 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, James R. Miller, 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 May 10, 1991 and by the Respondent on December 30, 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. Respondent, Malone & Associates, Inc. is liable and shall pay to the Claimant Lonnie G. Funderburke the sum of \$5,628.20 in damages.
2. The parties shall bear their respective costs.

AFFIRMATION

I, JAMES R. MILLER, 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.

A handwritten signature in cursive script, appearing to read "James R. Miller", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: August 17, 1992