

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard J. & Mildred L. Sisson

91-01914

Name of Respondents

J.W. Gant and Associates, Inc.,
Marvin Mitchell, and
Royce Park Investments, Inc.

REPRESENTATION

Claimants, Richard J. and Mildred L. Sisson were represented by Robin C. Carter, Esq. of Linden, Chapa & Fields of Tucson, Arizona.

Respondent, J. W. Gant and Associates, Inc. was represented by Gordon D. Dible, Esq. of Dible & Co., P. C. of Englewood, Colorado.

Respondent, Royce Park Investments, Inc. did not file an appearance.

Respondent, Marvin Mitchell did not file an appearance.

CASE INFORMATION

The statement of claim was filed with the NASD on June 19, 1991.

Claimant's Submission Agreement was signed on June 11, 1991 by Richard and Mildred Sisson.

The statement of answer was filed by Respondent, J. W. Gant and Associates, Inc. on August 14, 1991.

Respondent, J. W. Gant and Associates, Inc.'s Submission Agreement was signed on August 12, 1991 by J. Patrick Driver, Compliance Officer.

Respondent, Marvin Mitchell did not file either an answer to the claim or a Submission Agreement with the NASD.

Respondent, Royce Park Investments, Inc. did not file either an answer to the claim or a Submission Agreement with the NASD.

HEARING INFORMATION

A telephonic pre-hearing conference with the panel chairperson, counsel for J. W. Gant and Associates, Inc. and counsel for the Claimants was held for one session on February 5, 1992. The panel chairperson ruled on certain discovery issues during this pre-hearing conference.

The hearing date was May 28, 1992 and the hearing lasted for two hearing sessions.

The hearing location was Scottsdale, Arizona and J. W. Gant and Associates, Inc. appeared at the hearing via telephone from Denver, Colorado.

CASE SUMMARY

Claimants, Richard and Mildred Sisson, ("Claimants") alleged that unsuitable securities were recommended to them by Respondent, Marvin Mitchell ("Mitchell") while employed by Respondent, Royce Park Investments, Inc. ("Royce Park"). Specifically, Claimants alleged that Mitchell solicited and recommended to the Claimants the purchase of Applied Research Corp. Warrants, Investment Growth Resources, Inc., Bali Jewelry, Ltd. warrants, Boca Raton Capital Corp. warrants and common stock in Bali Jewelry, Ltd. Claimants alleged that Mitchell, Royce Park, and Respondent, J. W. Gant and Associates, Inc. had a duty not to recommend unsuitable investments to Claimants in light of their financial background and investment objectives. Claimants alleged that they did not know and were not told of the risks involved in these investments. Claimants alleged that they informed Mitchell that Mr. Sisson was leaving his employment in July of 1989 and could not afford to invest in anything risky. Mitchell allegedly told Claimants that the securities were "safe" and not "penny stocks" and that the investments were short term and would result in a profit within 60 days.

By virtue of Mitchell's omissions and/or misrepresentations of material facts, Claimants alleged that Royce Park, J. W. Gant and Mitchell violated Section 10(b) of The Securities Exchange Act of 1934 and rule 10b-5 promulgated thereunder. The allegations were also asserted to be violations of the Arizona Securities Act. J. W. Gant and Royce Park were alleged to be responsible for the acts of Mitchell under the doctrine of respondent superior.

Respondent, J. W. Gant specifically denied each of the allegations of the statement of claim and asserted, among others, the equitable affirmative defenses of waiver, estoppel, ratification and laches.

Respondents, Mitchell and Royce Park did not file answers to the Claim with the NASD.

RELIEF REQUESTED

Claimants requested compensatory damages of no less than \$15,000.00, special, consequential and punitive damages in such amount as the forum deems appropriate, attorney's fees, costs and such other relief as the panel deemed appropriate.

Respondent, J. W. Gant requested dismissal of the claims and award of reasonable attorney's fees and costs to defend this alleged meritless and frivolous claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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.

The arbitration panel, pursuant to its authority set forth in Sections 28 and 35 of the NASD Code of Arbitration Procedure ("NASD Code") determined that J. W. Gant could appear at the hearing via speaker telephone.

At the hearing on May 28, 1992, the arbitration panel determined that Royce Park had been served with the Statement of Claim and hearing notice through alternative service on the Secretary of State of Colorado in accordance with Section 7-3-112 of C.R.S. Accordingly, the arbitration panel determined to proceed in the absence of Royce Park at the hearing pursuant to its authority set forth in Section 29 of the NASD Code and Royce Park will be bound by the panel's determination on all issues submitted.

The arbitration panel also determined unanimously do dismiss Mitchell as a party Respondent without prejudice to Claimants. The arbitration panel's decision was based upon a determination that Mitchell had not received either the statement of claim or the hearing notice in accordance with Sections 25 and 26 of the NASD Code.

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. The claim asserted against Mitchell by Claimants is dismissed without prejudice for lack of service and therefore lack of jurisdiction;
2. The claims asserted against J. W. Gant and Royce Park by Claimants shall be denied and dismissed in their entirety; and,
3. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

OTHER COSTS

Pursuant to Section 43(c) of the NASD Code, J. W. Gant is assessed and shall pay to the NASD the sum of \$184.43 as the cost of the telephonic conference call for J. W. Gant to appear at the hearing on May 28, 1992.

FORUM FEES

Pursuant to Section 43c of the NASD Code, the following Forum Fees are assessed. The NASD shall retain the \$100.00 non-refundable claim filing fee and the \$300.00 hearing session deposit previously made with the NASD by the Claimants. J. W. Gant is assessed and shall pay to the NASD as additional Forum Fees, the sum of \$700.00. This sum represents the charge for one hearing session at \$400.00 and the charge for a pre-hearing conference at \$300.00. Claimants are not assessed any additional Forum Fees.

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

Concurring Arbitrators' Signatures

Name

Dated

/S/ Charles R. Hoover

June 26, 1992

Charles R. Hoover

Presiding Chairman/Public Arbitrator

/S/ J. W. Parker

June 24, 1992

J. W. Parker

Panelist/Public Arbitrator

/S/ Donald E. Berryman

June 29, 1992

Donald E. Berryman

Panelist/Industry Arbitrator

Date award served by the NASD:

July 16, 1992