

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Colin Cody

91-02018

Name of Respondent

Sutro & Co., Inc.

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REPRESENTATION

For Claimant: Colin Cody appeared pro se.

For Respondent: Barbara J. Glemms, Esq.

CASE INFORMATION

Statement of Claim filed on: June 27, 1991.

Claimant's Submission Agreement signed on: June 24, 1991.

Reply to Respondent's Motion to Dismiss filed on: October 15, 1991.

Statement of Answer and Motion to Dismiss filed by Respondent on: September 26, 1991.

Respondent's Submission Agreement signed on: September 17, 1991.

Motion to Dismiss filed on: September 27, 1991.

Motion to Dismiss filed on: January 15, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: February 12, 1992, 2 Sessions.  
January 30, 1992, Pre-Hearing Conference.

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged Respondent made an unauthorized, excessive purchase of stock in L.A. Gear, Inc. in the sum of \$22,500.00 and he only authorized a purchase in the sum of \$10,000.00 and he was led to believe that if his order was not able to be completely filled with IPO stock, then the balance would be filled from "hedge fund stock" which was not done. Claimant further alleged there were additional unauthorized, excessive purchases in the sum of \$11,875.00. Claimant further alleged he asked that certain trades be cancelled and Respondent refused to do so and Respondent sold without authorization at lower prices most of the stock in his account to compensate for the balance outstanding in his account.

Respondent maintained there were no unauthorized trades in Claimant's account and the Claimant placed an order to buy 2,000 shares of L.A. Gear, Inc. at the market after the commencement of the trading of stock and he was notified in writing of the trades, received a prospectus and a broker with Sutro & Co., Inc. called the Claimant to advise him of the transactions, the number of shares purchased and the trade price. Respondent further maintained they received in writing Claimant's explicit intentions not to pay for the trades and they were obligated under the Federal Reserve Board's rules to close out the positions. Respondent further maintained the losses suffered by Claimant, if any, were caused by fluctuations or the deterioration in the stock markets and not by any act or omission of Respondent. Respondent further maintained Claimant's claim should be dismissed for failure to file the claim within the applicable statute of limitations as proscribed by the United States Supreme Court and for his failure to comply with Section 32 of the Code of Arbitration Procedure concerning requests for documents.

In response to the Motions to Dismiss, Claimant maintained he has been prepared to provide Respondent with the documents requested and that Section 15 of the Code of Arbitration Procedure states the Claimant has six years to submit his claim and his claim was filed five years after the occurrence of the controversy.

RELIEF REQUESTED

Claimant requested as a minimum, 1616 to 3316 shares of L.A. Gear, Inc., punitive damages and treble RICO damages and denial of Respondent's Motions to Dismiss.

Respondent requested dismissal of claim and that any and all costs be assessed against the Claimant, including attorney's fees, other costs and expenses and such other relief the panel deems appropriate.

**NASD**

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 Respondent be and hereby is liable and shall pay to the Claimant the sum of \$7,348.78, interest specifically excluded;
2. The Respondent's Motions to Dismiss are denied.
3. The Claimant's request for Punitive Damages is denied.
4. The Claimant's claim for RICO Damages is denied.
5. Each party shall bear their respective costs, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

\$500.00 X 2 Sessions = \$1,000.00 minus hearing session deposit  
of \$500.00 = net \$500.00 due.

The Respondent be and hereby is liable and shall pay to the NASD the sum of \$500.00 to represent forum fees and the sum of \$300.00 as the fee for the pre-hearing conference conducted on January 30, 1992.

The NASD shall retain the \$150.00 claim filing fee previously deposited by the Claimant.

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

**CONCURRING ARBITRATORS' SIGNATURES**

  
William Friedman

Public Arbitrator

  
Charles C. Marotta

Public Arbitrator

  
David Levy

Industry Arbitrator

Date of Decision: MAR 23 1992