

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

James R. Leonard

91-02536

Name of Respondent

Michael J. Whalen

REPRESENTATION

For Claimant: David A. Webster, Esq. of the law firm of Sumner & Hewes.

For Respondent: Michael J. Whalen appeared pro se.

CASE INFORMATION

Statement of Claim filed on: August 14, 1991.

Claimant's Submission Agreement signed on: July 30, 1991.

Statement of Answer of filed by Respondent on: October 3, 1991.

Respondent's Submission Agreement signed on: October 3, 1991

HEARING INFORMATION

Hearing Date/Sessions: February 5, 1992, 2 Sessions.

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimant alleged that Respondent failed to follow his instructions, made misrepresentations of material facts and omissions of material facts; failed to disclose to Claimant there existed a conspiracy to manipulate the market; breached the fiduciary duty owed the Claimant; breached the contract with the Claimant; acted negligently to the Claimant and Respondent engaged in a pattern of racketeering activity.

Respondent maintained the Claimant has failed to plead the elements of a conspiracy and with respect to Claimant's RICO claims, the Claimant has failed to state a cause of action and failed to plead any federal securities law violation. Respondent further maintained he did not breach the fiduciary duty owed the Claimant; did not breach any contract with the Claimant and the Respondent was not negligent and all of Claimant's claims are without merit.

RELIEF REQUESTED

Claimant requested damages of not less than \$27,190.00 plus pre-judgment interest or, in the alternative, that the contracts between Claimant and Respondent in connection with the transacted securities be rescinded and that Claimant be awarded restitution of the purchase price of the securities, punitive damages in the sum of \$500,000.00, RICO damages and that the cost of the action and the expenses of arbitration, including reasonable attorney's fees, be assessed against the Respondent and such other and further relief as the panel deems just and proper.

Respondent requested dismissal of all claims against him.

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. All claims by the Claimant be and hereby are dismissed in all respects;
2. The Claimant's claim for punitive damages is denied.
3. The Claimant's claim for RICO damages is denied.
4. 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.

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

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$700.00 to represent forum fees and the Respondent be and hereby is liable and shall pay to the NASD the sum of \$300.00 to represent forum fees.

The NASD shall retain the \$250.00 claim filing fee previously deposited by the Claimant.

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

CONCURRING ARBITRATORS' SIGNATURES


Robert H. Putnam, Jr., Esq.

Public Arbitrator