

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

LeRoy E. Kennel

Claimant

CASE #91-02625
AWARD

vs.

Jay Fertman

Respondent

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 23, 1991, Claimant LeRoy E. Kennel who appeared Pro Se, alleged that in 1988 Respondent Jay Fertman of Xcell Securities, Inc. heavily solicited him to purchase 175,000 shares Briarwood Capital Corp.; 100,000 shares Commerce Ventures, Inc.; 250,000 shares Gleneagle Cap Corp.; 50,000 shares Lexcor Inc., 100,000 shares Superior Ventures and 50,000 shares Tardis Inc. by assuring him that each company's management was sound and these were strong positions with a strong return, at which time, Respondent failed to advise him of the risks involved with these positions but instead insisted that Claimant should trust him. Claimant further maintained that he informed Respondent that he was not a wealthy investor but a minister with a modest income, whereby he was looking for a sound investment program with both a short range investment for assisting in the building of a church, and long term investment of security. Claimant further contended that when he transferred stocks on July 13, 1988, he requested Respondent to move stocks when there was a profit, at which time, Respondent failed to respond and in fact, failed to credit Claimant with these stocks until October. Claimant asserted that he repeatedly informed Respondent Jay Fertman that he wanted to sell his positions whereby Respondent's assistants informed him that Respondent Jay Fertman told them to advise him to hold the positions because prices were going up, and this is not the time to sell. Claimant further asserted that when he insisted that the Lexcor and Supervise Ventures be sold, he was advised by Respondent's assistant, Ramon Money that they were of no value. Claimant argued that Respondent Jay Fertman's inappropriate handling of his funds and misleading information, caused him to sustain losses.

Respondent Jay Fertman who appeared Pro Se, maintained that he denies that he did not respond to Claimant LeRoy E. Kennel's telephone calls or that failure to do so constitutes any ground for recovery. Respondent further maintained that he denies he ever refused to enter an order on behalf of Claimant or that he ever used any high pressure sales techniques. Respondent contended that he supplied Claimant with information on all purchases and made certain Claimant knew where and how to contact him at not cost. Respondent further contended that Claimant's 250,000 share position in Gleneagle is now worth, at the bid price in effect today, \$50,000.00 in and of itself. Respondent further contended that Claimant's claim is barred by the applicable statute of limitation and Claimant has pled his case with insufficient specificity, therefore, Respondent cannot prepare a relevant answer and is precluded thereby from being able to mount a proper defense.

RELIEF REQUESTED

Claimant LeRoy E. Kennel requested \$10,000.00 in actual damages.

Respondent Jay Fertman 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, Ellen E. Douglas was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 19, 1991 and by the Respondent on January 27, 1992.


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 Jay Fertman is liable and shall pay to the Claimant LeRoy E. Kennel the sum of \$10,000.00 in damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant LeRoy E. Kennel shall be retained by the NASD, Inc.
4. Respondent Jay Fertman is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

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AFFIRMATION

I, ELLEN E. DOUGLAS, 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: January 18, 1993