

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Jerome Simonoff :

Claimant :

vs. :

Best Investors Group, Inc. :

Respondent :
-----CASE #91-03085
ANARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 2, 1991, Claimant Jerome Simonoff, who appeared Pro Se, alleged that in early October 1990 he received notice from Respondent Best Investors Group, Inc. that an annual fee was being imposed on his account, at which time, on October 10, 1990 Claimant informed Respondent that he did not want to be charged a fee, therefore, he instructed Respondent to close his account and to deliver the certificate for NTN Canada; the only holding in the account; to him. Claimant further alleged that on December 18, 1990, after receiving no response to his request, he sent a certified letter to Respondent restating his request to close the account and deliver the certificate. Claimant contended that on January 16, 1991 when he received a confirmation of the status of his account from Deloitte & Touche, he advised them in writing of the problem and also sent a copy to Oтра Clearing, Inc. Claimant further contended that on July 22, 1991 he received notice that Respondent had sold 34 shares of NTN Canada to cover their \$25.00 annual fee, yielding Claimant \$26.00 after commission and he was also advised of another annual charge being levied. Claimant asserted that Respondent's failure to follow his explicit instructions to close the account and deliver the certificate, caused Claimant to sustain losses due to the fees charged and not having possession of his shares to sell.

Claimant filed a Motion to Preclude Respondent's Statement of Answer, pursuant to Section 25(b)(2) of the NASD Code of Arbitration Procedure, in that Respondent failed to submit their Answer in a timely manner, even given a two-week extension, therefore, Respondent should be precluded from filing any response.

Respondent Best Investors Group, Inc. by and through their counsel John E. Lawlor, Esq., Sole Practitioner, Garden City, New York, maintained that Claimant Jerome Simonoff was originally notified on an annual maintenance fee in July 1990, not October and that maintenance fee is assessed by Respondent's clearing agent, Otra Clearing Corp., Inc., not Respondent. Respondent further maintained Claimant's letter of October 10, 1990 was not received and Claimant's letter of December 12, 1990 was in fact received, but his request to deliver his securities could not be processed due to the fact that the maintenance fee caused a \$25.00 debit in his cash account. Respondent contended that Otra Clearing Corp., Inc. liquidated 34 shares of NTN Canada on July 22, 1991, fully one year after notice to Claimant of the maintenance charge assessed to his account and six months after his last correspondence dated January 16, 1991 sent to Deloitte & Touche, but not received by Respondent. Respondent further contended that during this action, the balance of Claimant's account has been liquidated at his direction, no commission paid and Respondent has reversed the 1991 maintenance fee. Respondent asserted that Claimant has not sustained any actionable losses nor is he entitled to any recovery in that he never requested his securities be sold, therefore, he is not entitled to lost profits. Respondent further asserted that Claimant's losses, if any, were caused by his own actions and failures to act, and his own failure to sell securities in his account at a price to which he believes he is entitled, therefore, Respondent is not liable for Claimant's failure to exercise that degree of diligence expected of a reasonable person in the conduct of his own affairs.

Respondent replied to Claimant's Motion to Preclude by asserting that on November 1, 1991, Respondent received an extension of time to Answer and subsequently, Respondent's counsel, John E. Lawlor, Esq. was called to select a jury in Queens Supreme Court. Respondent's failure to file a timely Answer should not be charged against them and the fact that Claimant has no recoverable damages, his Statement of Claim should be dismissed.

RELIEF REQUESTED

Claimant Jerome Simonoff requested \$1,625.00 in actual damages plus interest and reimbursement of the NASD filing fee.

Respondent Best Investors Group, Inc. requested the claim be dismissed.

AWARD

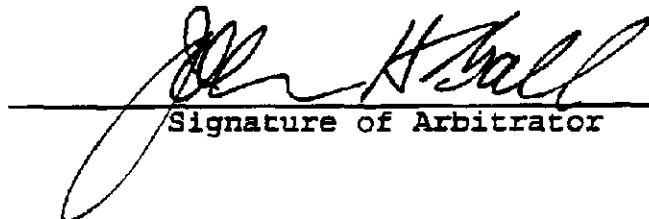
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John H. Ball, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 26, 1991 and by the Respondent on December 11, 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. The Claimant's Motion to Preclude is denied.
2. Respondent Best Investors Group, Inc. is liable and shall pay to the Claimant Jerome Simonoff the sum of \$700.00.
3. The Claimant's request for interest is denied.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jerome Simonoff shall be retained by the NASD, Inc. Respondent Best Investors Group, Inc. is liable and shall pay to the Claimant the sum of \$50.00 as reimbursement.

AFFIRMATION

I, JOHN H. BALL, 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: October 14, 1992