

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Wendy & James Wightman

91-03473

Name of Respondent(s)

The Investment Center Inc.
Edward Yates
Gary Trump

REPRESENTATION

For Claimants, Wendy Wightman and James Wightman ("Claimants"), Dominic J. Paratore, Esq., from the law firm of Gabrielle & Paratore, P.C.

For Respondent, The Investment Center, Inc. ("ICI"), Ralph DeVito, Sr., President of The Investment Center, Inc.

Respondent, Edward Yates ("Yates"), did not appear at the hearing and was not represented by counsel.

Respondent, Gary Trump ("Trump"), was not represented by counsel.

CASE INFORMATION

Statement of Claim was filed on November 4, 1991.

Claimants' Submission Agreement was signed on November 1, 1991 and February 12, 1992.

ICI's Statement of Answer was filed on March 26, 1992.

ICI's Submission Agreement was signed on March 23, 1992.

Trump did not file a Statement of Answer or execute a Submission Agreement.

Yates did not file a Statement of Answer or execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: November 9, 1992 - Two Sessions
 December 7, 1992 - Two Sessions

Hearing Location: Ramada Inn, Albany, New York.

CASE SUMMARY

Claimants allege that they invested \$19,000.00 with ICI through Yates which was to be placed in safe investments. Claimants state that they invested with ICI for its expertise and believed that ICI would invest their money cautiously. Claimants allege that Respondents led them to believe that their investment would result in long term growth. Claimants also allege that they informed Yates that they could not afford to take any risks and that Yates assured them that "he would use extreme caution, and no margin calls would be used" in their account.

Claimants further allege that when they received their account statement and saw the margin calls they called ICI and Yates intercepted their calls and informed them that the margin calls were a result of computer error which originated in the home office.

Claimants state that on May 15, 1990, Mr. Wightman requested a withdrawal of \$13,000.00 from the account and Yates said that he would get back to him. Claimants state that they later learned that the \$19,000.00 was lost on margin calls. Claimants further state that they tape recorded a conversation with Yates who admitted that their account was on margin and agreed to meet with them to discuss the account. Claimants allege that they met with Yates and Trump, who was introduced as the president of ICI, and Yates and Trump agreed to pay Claimants \$3,000.00 and restore the balance, \$17,500.00, by June 1, 1991.

ICI denies liability and denies that Claimants lost \$19,000.00. ICI states that this claim is an attempt to mislead and distort the actual facts because Claimants withdrew \$3,000.00 from the account. ICI contends that Claimants' statement that they wanted a safe investment and no margin account belies the fact that they signed a Margin Agreement, an Option Agreement and an Options Risk Disclosure form. ICI also contends that it has no fiduciary responsibility to Claimants and that it was their failure to meet a margin call that caused them to sustain a loss. Said Respondent alleges that Claimants have had accounts at other brokerage firms. Additionally, ICI contends that Trump and Yates did not have the authority to bind ICI.

Trump denies the allegations and denies liability.

RELIEF REQUESTED

Claimants request an award of \$19,000.00.

ICI requests that this arbitrator dismiss the claim in its entirety and that Claimants be directed to indemnify and hold ICI harmless. and pay ICI reasonable attorney's fees and costs.

Trump requests that the claims against him be denied.

OTHER ISSUES CONSIDERED & DECIDED

Yates did not appear at the hearing to defend to allegations asserted against him. Based upon the papers submitted regarding hearing notices sent to the parties and evidence introduced by Claimants giving Yates notice of the hearing, this arbitrator finds that proper notice was given to Yates and proceeded with the hearing in his absence pursuant to Section 29 of the Code of Arbitration Procedure.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and Claimant's post-hearing submission dated December 9, 1992 and ICI's post-hearing submission dated December 24, 1992, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. ICI, Yates and Trump are jointly and severally liable to the Claimants and shall pay them **FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00).**
2. No interest is awarded on the above sum.
3. All other claim for relief is denied.

FORUM FEES

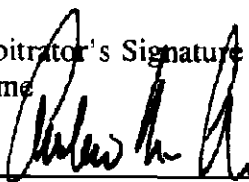
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

- \$100.00 - Non-refundable Filing Fee.
- \$1200.00 - Hearing Session fees for 4 hearing x \$300.00 = \$1200.00

1. Forum Fees shall be borne equally by the parties so that each party is assessed \$300.00.
2. Claimants deposited \$400.00 and is entitled to a refund of \$100.00.
3. Respondent ICI shall reimburse Claimants \$100.00 and remit \$200.00 to the NASD, Inc.
4. Yates and Trump shall each remit \$300.00 the NASD, Inc.

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

Arbitrator's Signature
Name


Andrew N. Carnell, Esq.

Public Chairperson

Date of Decision: February 11, 1993

STATE OF New York s.s.:
COUNTY OF New York

On this 9th day of February, 1993, before me personally appeared Andrew N. Carnell known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Catherine T. Feeney-Thompson

CATHERINE T. FEENEY - Thompson
Notary Public, State of New York
No. 4858236
Qualified in New York County
Certificate filed in New York County
Commission Expires October 30, 1993