



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Cameron Grammas and J. Gusty Yearout

91-03525

Name of Respondents

Bradford (J. C.) & Co.

REPRESENTATION

For Claimants Cameron Grammas ("Grammas") and J. Gusty Yearout ("Yearout"): Cavender C. Kimble, Esq. and Michael L. Edwards, Esq. of the law firm of Balch & Bingham.

For Respondent J.C. Bradford & Co. ("Bradford"): A. Inge Selden III, Esq. and Claude O. Ramer II, Esq. of the law firm of Maynard, Cooper, Frierson & Gale, P.C.

CASE INFORMATION

Statement of Claim filed on November 7, 1991.

Amended Statement of Claim filed on December 16, 1991.

Claimants' Submission Agreement signed on October 24, 1991.

Statement of Answer filed on December 17, 1991.

Respondent's Submission Agreement signed on December 2, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: July 21, 1992, 2 Sessions.  
July 22, 1992, 2 Sessions.

Hearing Location: National Association of Securities Dealers, Inc. offices located in Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that Respondent advised Claimants Grammas and Yearout to open a margin account and to pledge stock owned by Grammas as collateral. Claimant Grammas further alleged that he informed Respondent that the pledged stock represented his life savings and was not to be sold. Claimants further alleged that Respondent promised them that none of the pledged stock would be sold and that later, without providing notice to Claimants, sold all of Claimants' pledged stock. Claimants further alleged that Respondent made misrepresentations and omissions, upon which Claimants relied, concerning the safety, prudence and suitability of investments Respondent made on behalf of Claimants. Claimants further alleged that they suffered large losses in 1987 and 1988 as a result of Respondent's conduct and that Respondent was liable to Claimants for violating section 10b of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; fraud, under the laws of Alabama; breach of fiduciary duty; breach of contract; conversion, for selling Claimants' pledged stock; and excessive trading.

Respondent maintained that Claimants were experienced, knowledgeable and active traders who maintained complete control over their account at all times and that Claimants were responsible for any losses in their account. Respondent further maintained that Grammas requested that a margin account be opened with his securities pledged as collateral and that he never indicated that the pledged stock represented his life savings and should not be sold. Respondent further maintained that Claimants' stated investment objective was to achieve short-term trading profits and that Respondent's recommendations were safe, prudent and suitable in light of Claimants' investment objectives. Respondent further maintained that it never promised not to sell the pledged stock and that it did not sell any pledged stock without first providing Claimants with notice that their account was undermargined. Respondent further maintained that it did not trade in Claimants' account to generate commissions and that it made no misrepresentations or omissions of any material fact. Respondent maintained as affirmative defenses that Claimants approved and ratified each transaction in their non-discretionary account; that Claimants are estopped by their conduct; that Respondent acted properly, in good faith, and in a commercially reasonable manner; and that Claimants' claims are barred by the applicable statutes of limitation. Respondent further maintained that punitive damages were not warranted, that applicable law does not allow punitive damages, and that awarding punitive damages would violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

RELIEF REQUESTED

Claimants requested a judgment against Respondent in the sum of two million dollars in compensatory and punitive damages together with interest and costs.

Respondent requested that the claim be dismissed in all respects, and that Respondent be awarded its reasonable attorneys' fees, costs and expenses and such other further relief as is deemed just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

On June 18, 1992 the arbitration panel requested that the parties submit briefs to the NASD offices in New York, NY no later than June 30, 1992, concerning Respondent's statute of limitations defense.

Respondent maintained that Claimants' recovery under their claims for fraud, breach of fiduciary duty and for violations of the Securities and Exchange Act of 1934 were barred by the applicable two year statutes of limitation as to all claims which arose prior to October 19, 1987.

Claimants maintained that their claims for breach of contract and conversion were brought within the applicable six year statutes of limitation, under Alabama law, for actions in breach of contract and conversion. Claimants further maintained that with respect to their claims for fraud, breach of fiduciary duty, and violations of section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5, Claimants discovered the alleged wrongdoing within one year of October 19, 1989, when the action was commenced, and, therefore, those claims are not barred by the applicable statutes of limitation.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by the Claimants be and hereby are dismissed on the merits.
2. The Claimant's request for punitive damages is denied.
3. 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:

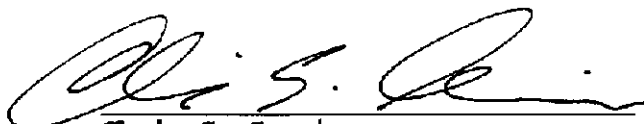
4 sessions X \$1,000.00 = \$4,000.00 minus hearing session deposit of \$1,000.00  
= net \$3,000.00 due.

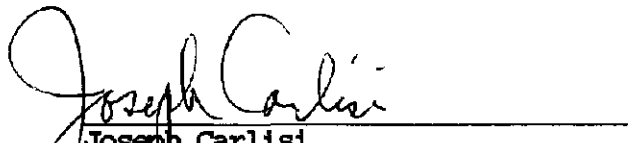
The Claimants be and hereby are liable and shall pay to the NASD the sum of \$3,000.00 to represent forum fees.

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

ARBITRATOR SIGNATURES

  
James C. Bussart, Esq.  
Public Arbitrator

  
Chris S. Guerin  
Industry Arbitrator

  
Joseph Carlisi  
Public Arbitrator

Date of Decision: September 9, 1992