

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Richard Nuzzolese)

Jeffrey Rice)

Howard Kassof)

) Case No. 91-03916

Name of Respondent(s))

PaineWebber, Inc.)

David Spann)

REPRESENTATION

For Claimants, Richard Nuzzolese ("Nuzzolese"), Jeffrey Rice ("Rice") and Howard Kassof ("Kassof"): Michael Harris, Esq. of Lewis, Vegosen and Rosenbach, P.A.

For Respondents, PaineWebber, Inc. ("PaineWebber") and David Spann ("Spann"): Michael Alford, Esq. of PaineWebber.

CASE INFORMATION

Statement of Claim filed: December 10, 1991. Claimants' Submission Agreements signed: December 4, 1991 by Nuzzolese, and on October 23, 1991 by Rice and Kassof.

Respondents' Statement of Answer filed: February 24, 1992. Respondents' Submission Agreements signed: February 14, 1992 by Spann, and on February 14, 1992 by Patricia Cowart on behalf of PaineWebber.

HEARING INFORMATION

On November 17, and 18, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for misrepresentations made by Respondents which induced Claimants to purchase certain stock. Claimants alleged that Respondents misrepresented that a tender offer or takeover of the stock's issuer was imminent and misrepresented the future price increase of the stock as well as the issuer's financial condition. Claimants alleged violations of Florida Statute section 517.301; common law fraud; breach of fiduciary duty and violation of Florida Statute section 895.03.

Respondents denied all allegations of wrongdoing and alleged that: the information that the issuer was a takeover target was widely disseminated; Spam did not purport to have inside information; the Claimants were advised that the stock was thinly traded and were advised of the risks involved.

Respondents alleged the affirmative defenses of: failure to state a claim; good faith; the losses were not proximately caused by any misconduct of Respondents but, rather, by persons, conditions and events beyond Respondents' control.

RELIEF REQUESTED

Claimants requested damages of approximately \$31,374.48 for Nuzzolese, \$5,025.00 for Rice and \$8,046.35 for Kassof plus interest, treble damages, attorney's fees and costs.

Respondents requested dismissal of the claim plus attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel has denied Claimant's Motion to Amend Statement of Claim.
2. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, PaineWebber and Spam, are found not liable to the Claimants, Nuzzolese and Kassof, and, therefore, the claims filed by Nuzzolese and Kassof against them are hereby dismissed.
2. Respondents, PaineWebber and Spam, are found liable, jointly and severally, to Claimant, Rice, and shall pay to Rice the amount of \$5,164.70, plus interest at the legal rate of 12% per annum (from February 22, 1991 to December 15, 1992) in the amount of \$1,124.07 for a total due to Claimant, Rice of \$6,288.77.
3. Upon receipt of the amount specified in paragraph #2 above, Claimant, Rice, shall execute any documents necessary to effect a transfer of all his right, title and interest in the Y and A Group, Inc. stock to Respondents, PaineWebber and Spam in amounts proportional to the amounts paid by PaineWebber and Spam to Rice.
4. Claimants' requests for attorney's fees are denied.
5. Claimants' requests for treble damages are denied.
6. Respondents' request for attorney's fees is denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00 per session).
2. Claimants, Nuzzolese and Kassof, are hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$680.00.
3. Respondent, PaineWebber, is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/
Gregory J. Ersek, Esq.

Public

/s/
Harold Alenick

Public

Dissenting Arbitrator Signature

Arbitrator, Philip Snyder dissents as to Paragraphs #1 and #4 of the Award and as to paragraph #2 of the Forum Fees and otherwise concurs in the decision. Mr. Snyder would find PaineWebber and Spam liable to all three Claimants and would assess attorney's fees and all forum fees against PaineWebber.

/s/
Philip J. Snyder

Public

Date of Decision: December 8, 1992