

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James Springart

91-04132

Name of Respondents

D.H. Blair & Company
Mario Gambuzza
Mark A. Giudice

REPRESENTATION

For Claimant James Springart ("Claimant"): Brian A. Carlis, Esq. of the law firm Stark & Stark, P.C.

For Respondent Mario Gambuzza ("Gambuzza"): Franklin D. Ormsten, Esq. of the law firm of Ormsten & Evangelist.

For Respondent D. H. Blair & Company ("D.H. Blair"): Carol R. Burstein, Esq. of the law firm of Bachner, Tally, Polevoy & Misher.

For Respondent Mark Guidice ("Guidice"): Ira N. Glauber, Esq. of the law firm of Jaffe and Asher.

CASE INFORMATION

Statement of Claim filed: December 30, 1991

Claimant's Submission Agreement properly signed on: March 10, 1992

Statement of Answer filed by Gambuzza on: May 15, 1992

Gambuzza's Submission Agreement signed on: May 13, 1992

Answer of Gambuzza to Cross-Claim of D. H. Blair filed: October 13, 1992.

Statement of Answer and Cross-Claims filed by D. H. Blair on: May 12, 1992

D.H. Blair's Submission Agreement signed on: May 6, 1992

Statement of Answer filed by Guidice on: May 14, 1992
Guidice 's Submission Agreement signed on: June 11, 1992
Answer of Guidice to Cross-Claim of D. H. Blair filed: October 6 1992.

HEARING INFORMATION

Pre-Hearing Conference: none were conducted in this matter.

Hearing Date/Sessions: July 13 - two sessions
Hearing Location: Holiday Inn, Philadelphia, PA

CASE SUMMARY

Claimant alleged that he was an unsophisticated investor with limited savings and assets. Claimant alleged that from the sale of his home he entrusted Gambuzza to help him invest the proceeds so that he could use the proceeds to purchase a new home. Claimant alleged that he told Gambuzza that his investment objective was stability of principal with conservative income. Claimant alleged that Gambuzza completely ignored Claimant's investment objectives. Claimant alleged that all orders were solicited and many were done with no authorization. Claimant alleged that his account was not a discretionary account and that Respondents did not have authority to make trades in Claimant's account without his prior approval. Claimant alleged that Respondents churned his account. Claimant alleged that Gambuzza commenced a haphazard, aggressive trading strategy purchasing highly speculative stocks that were completely unsuitable for Claimant. Claimant alleged that Gambuzza churned his account to generate maximum commission revenues. Claimant alleged that Respondent D. H. Blair failed to properly supervise Gambuzza and Guidice and that D. H. Blair failed to properly supervise Claimant's account.

Respondent Gambuzza maintained that Claimant approached him to become Claimant's broker and to open an account with Gambuzza while he was at F. D. Roberts. Gambuzza maintained that Claimant wished to double the monies he received from the sale of his home in order to purchase a larger or newer home. Gambuzza maintained that Claimant was the one who formulated the investment objective which was a relatively quick doubling of return. Gambuzza maintained that all investments were authorized by Claimant prior to the transaction. Gambuzza maintained that on occasion Claimant would suggest transactions. Gambuzza maintained that Claimant's account was not churned and that all investments were suitable for Claimant given his investment objectives. Gambuzza maintained that Claimant knowingly entered into the transactions; determined to wait and see if those transactions work out while knowing the risks of the investments. Gambuzza maintained that Claimant should not be allowed

to shift the blame back to Gambuzza.

Respondent D. H. Blair denied all allegations of wrongdoing asserted by the Claimant. D. H. Blair maintained that although it denied any liability, in the event the Claimant recovers judgment against it, then D.H. Blair cross-claimed that Gambuzza and Guidice are liable to D.H. Blair for the full amount of the judgment.

Respondent Guidice maintained that during the short period of time he handled Claimant's account, he properly service Claimant's account and followed the Claimant's instructions. Guidice maintained that he received Claimant's account and introduced himself to Claimant after Gambuzza had left D.H. Blair's employment. Guidice maintained that he had an amicable relationship and executed mainly unsolicited orders. Guidice maintained that Claimant was interested in recouping some of the losses that were sustained in stocks that were transferred over from F.D. Roberts and finally sold by Guidice. Guidice maintained that he did not execute unauthorized trades, he did not purchase unsuitable stocks and he did not churn Claimant's account. Guidice maintained that he did nothing wrong whatsoever and that Claimant took a shotgun approach with respect to naming him as a Respondent.

RELIEF REQUESTED

Claimant, in his pleadings, requested compensatory damages in the amount of \$15,733.06. At the hearing Claimant amended his compensatory damage claim against the remaining Respondent Gambuzza to \$15,733.05, plus opportunity loss of \$8,212.91, interest in the amount of \$12,629.88 and punitive damages in the amount of \$50,000.

Respondents Gambuzza and D.H. Blair requested that Claimant's claim be dismissed in its entirety and that they be awarded costs and reasonable attorneys' fees. In addition D.H. Blair requested judgment against Gambuzza and/or Guidice if it is found liable to Claimant.

Respondent Guidice requested that Claimant's claim be dismissed with costs, attorney's fees and punitive damages.

OTHER ISSUES CONSIDERED & DECIDED

That prior to the hearing Respondents D.H. Blair and Guidice settled with Claimant. The Panel understood that all related claims, counter claim and cross-claims were either settled or withdrawn.

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.

That at the conclusion of the hearing, Gambuzza's attorney would not confirm on the record whether Gambuzza had been given a fair and equal opportunity to be heard. The Panel; therefore, left the record open for ten days to allow Gambuzza an opportunity to submit his reason(s) in writing. The Panel advised Gambuzza if his reason(s) was not submitted in writing within ten days, he would lose the opportunity to submit reasons. No reasons were submitted and the Panel deemed the opportunity to submit Gambuzza's reasons closed on July 23, 1993.

AWARD

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

1. That Gambuzza is liable to Claimant and shall pay to Claimant the sum of NINETEEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$19,500); this amount is inclusive of interest.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That all other expenses, including attorneys' fees, shall be borne by the respective parties except for as specified herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees are assessed as follows:

$$2 \text{ hearing sessions} \times \$500 = \$1,000$$

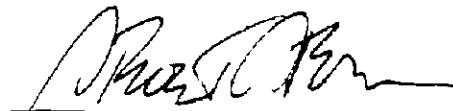
All forum fees are assessed against Respondent Gambuzza. Gambuzza is directed to refund to Claimant his previously filed hearing session deposit of \$500 so that Gambuzza shall pay forum fees to the NASD in the amount of \$500 and pay to Claimant \$500 to refund to him his previously filed hearing session fees.

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

Concurring Arbitrator's Signature
Name

Public/Industry



Steven T. Stern, Esq.

Public Arbitrator

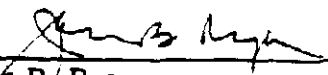
Date of Decision: August 17, 1993

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

Concurring Arbitrator's Signature
Name

Public/Industry


John B. Ryan


Industry Arbitrator

Date of Decision: August 11, 1993

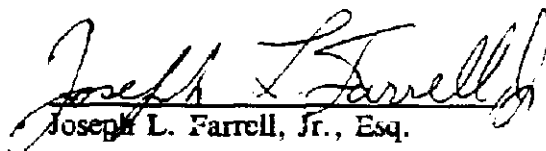
NASD Date of Decision: August 17, 1993

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Concurring Arbitrator's Signature
Name

Public/Industry


Joseph L. Farrell, Jr., Esq.

Public Arbitrator

Date of Decision: August 17, 1993