

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Earl C. Brown :

Claimant :

vs. :

J.W. Gant & Associates, Inc. :
Allen W. Branam :

Respondents :

CASE #92-00123
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 14, 1992, Claimant, Earl C. Brown, who appeared Pro Se, alleged that on or about October 7, 1991 he spoke to Respondent Allen W. Branam, a registered representative with Respondent, J.W. Gant & Associates, Inc., who suggested Claimant liquidate his 2,000 shares of Celebrity Resorts stock and 2,500 Celebrity Warrants in his account, at which time Claimant agreed and instructed Respondent Allen W. Branam to liquidate these positions. Claimant further alleged that Respondent Allen W. Branam advised him to purchase Magnatech stock with the proceeds of the sale, at which time Claimant declined the purchase and instructed Respondent Allen W. Branam to place the equity of the sale in his account until Claimant decided if he would remain in the market. Claimant contended that on or about October 14, 1991 he called Respondent Allen E. Branam to inquire as to the whereabouts of the confirmation for the sale and Respondent, Allen E. Branam informed Claimant that he had in his notes from their previous conversation to place the account on hold. Claimant further contended that he advised Respondents, J.W. Gant & Associates, Inc. and Allen W. Branam of the error and felt that Respondent, Allen W. Branam intentionally did not liquidate his positions because he declined to reinvest in the Magnatech stock. Claimant asserted that Respondent, Allen W. Branam disregarded his explicit instructions to liquidate his securities and therefore, Respondents, J.W. Gant & Associates, Inc. and Allen W. Branam, should be required to honor the prices quoted to Claimant on October 7, 1991.

Respondents, J.W. Gant & Associates, Inc. and Allen W. Branam by and through their outside counsel, Gordon D. Dihle, Esq. of

Dihle & Company, P.C., Englewood, Colorado, maintained that on or about October 7, 1991 Respondent, Allen W. Branam had a conversation with Claimant where they discussed possibly liquidating Claimant's shares of Celebrity Stock and his Celebrity Warrants, at which time Claimant declined and informed Respondent, Allen W. Branam to place his account on hold. Respondents further maintained that on or about October 14, 1991 Claimant phoned Respondent, Allen W. Branam and inquired as to the whereabouts of the confirmation for the sale of his positions at which time Respondent Allen W. Branam informed Claimant that he had not understood that Claimant desired to sell these securities and that his notes from their previous conversation confirmed that Claimant did not order the sale but placed the account on hold. Respondents contended that they deny Claimant ever requested these securities be sold and in fact, has maintained these positions to the present date. Respondents further contended that Claimant admits that on or about October 14, 1991 upon "discovering" that his positions had not been sold, Claimant failed to sell, transfer or take any further action with respect to these securities therefore, Claimant failed to mitigate his losses. Respondents asserted that Claimant has suffered no damages as a result of the alleged wrongful or inactions on the part of Respondents and therefore, should not be awarded his claim.

RELIEF REQUESTED

Claimant, Earl C. Brown requested \$5,000.00 in actual damages.

Respondents, J.W. Gant & Associates, Inc. and Allen W. Branam requested the claim be dismissed and they be awarded their attorney's fees and all other costs.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joe B. Abbey, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 9, 1992, by the Respondent, J.W. Gant & Associates, Inc. on March 25, 1992 and by Respondent, Allen W. Branam on March 24, 1992.

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 claims of Claimant, Earl C. Brown against Respondents, J.W. Gant & Associates, Inc. and Allen W. Branam are dismissed.
2. The parties shall bear their respective costs including attorney's fees.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Earl C. Brown shall be retained by the NASD, Inc.

AFFIRMATION

I, JOE B. ABBEY, ESQ., 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: May 18, 1992