

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Michael G. Scheer and Bette B. Scheer

92-00305

Name of Respondent(s)

Citizens & Southern Securities Corp.

REPRESENTATION

For Claimants Michael G. Scheer and Bette B. Scheer: Taylor Jones, Esq. and Timothy Brennan, Esq. of Atlanta, GA.

For Respondent Citizens & Southern Securities Corp: G. Wayne Hillis, Jr., Esq. of Parker Hudson Rainer & Dobbs, Atlanta, GA.

CASE INFORMATION

Statement of Claim filed: January 27, 1992.

Claimant's Submission Agreement signed on: January 15, 1992.

Statement of Answer filed by Respondent Citizens & Southern Securities Corp. on: March 20, 1992.

Respondent Citizens & Southern Securities Corp.'s Submission Agreement signed on: March 18, 1992.

HEARING INFORMATION

Hearing Date/Sessions: January 5, 1994 / Two Sessions.

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimants alleged that on June 15, 1985 they entered into a brokerage agreement with Respondent and between 1985 and December 1986, Claimants made relatively modest purchases of less than \$10,000.00 on at least 3 occasions. Claimants further alleged that they did not affect any trades until June 17, 1988 until they purchased 10,525 shares of Texaco for \$521,854.00. Claimants contended that they then used Respondent's services to affect substantial purchases on 13 separate occasions with an average purchase of \$340,702.00, all between June 17, 1988 and September 23, 1988. Claimants further contended that between September 23, 1988 and December 15, 1988 Claimants made a purchase for \$43,053 and then from December 15, 1988 through April 26, 1989 Claimants made 28 substantial purchases. Claimants alleged that all issues purchased during all these periods were held for a short time and generally sold within a week of purchase. Claimants contended that while their account with Respondent was non-discretionary, Respondent's employee, Mary Rose Wagner, Claimant's account executive would from time to time provide Claimants with trading advice and encouragement especially when Claimants became discouraged with the results of their investments. Claimants further contended that during a meeting with Ms. Wagner and Mark Williamson, an employee of Respondent, Claimants were informed that their investment strategy was unsound and would rarely, if ever, prove successful and that Respondent would not allow Claimants to continue their investment strategy by utilizing Respondent's services. Claimants contended that as a result of trading activity with Respondent between June 17, 1988 and May 1, 1989 Claimants suffered a cumulative loss of \$355,922.93 and paid Respondent an additional sum in commissions in the amount of \$93,481.86. Claimants alleged that Respondent, acting through its employees, breached its duty to know its customers and failed to recognize that Claimants were unsophisticated investors. Claimants further contended that Respondent failed to monitor their trading activity and timely advise Claimants that they were pursuing an unsound investment strategy, which caused Claimants to suffer losses in their account.

Respondent maintained that during the first six months Claimants' account was open, Respondent acted as a discount brokerage and thus was prohibited from offering Claimants any investment advice. Respondent further maintained that Claimants' account with Respondent was at all times non-discretionary, thereby, Respondent had no duty to restrain Claimants' trading which they ardently desired and directed. Respondents maintained that a broker has no obligation to refuse orders or to try to prevent imprudent trading.

RELIEF REQUESTED

Claimants requested \$449,404.79 in compensatory damages.

Respondent requested all claims be dismissed.

AWARD

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

1. All claims be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs.
3. The panel received testimony and documentary evidence from the Claimants, and upon the close of the Claimants' case determined the following:
The panel finds that Claimants' accounts with the Respondent were non-discretionary in nature, and that Respondent never solicited, recommended, or advised Claimants to purchase any security. As such, the panel finds no facts which would give rise to a duty on the part of Respondent to advise Claimants regarding their trading strategy or patterns. Moreover, the panel finds that the Claimants had equal knowledge of the losses which resulted in their accounts as a result of their trading patterns. The panel further finds that Claimant Michael Scheer did not suffer from any diminished capacity during the time his account with Respondent was open, and finds no evidence that the Respondent was aware of any disability on his part. Finally, the panel finds that the Respondent's alleged failure to advise Claimants of the allegedly unsuitable nature of their trading strategy could not be the proximate cause of Claimants' losses, inasmuch as Claimants' trading activities subsequent to being told that their strategy was unsound, and after closing their accounts with Respondent, shows that Claimants would not have been deterred by any such advice.

FORUM FEES

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

2 sessions x \$750.00 = \$1,500.00 less \$750.00 hearing session
deposit = \$750.00 net due.

Respondent be and hereby is liable and shall pay the NASD the sum of \$750.00 to represent forum fees.

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The NASD shall retain the \$200.00 filing fee and the \$750.00 hearing session deposit previously paid by Claimant.

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

ARBITRATORS' SIGNATURE

A handwritten signature in cursive script, appearing to read "Michael A. Caldwell", written over a horizontal line.

Michael A. Caldwell, Esq.
Public Arbitrator

Sidney R. Barrett, Esq.
Public Arbitrator

Barbara L. Guzman
Industry Arbitrator

Date of Decision: March 9, 1994

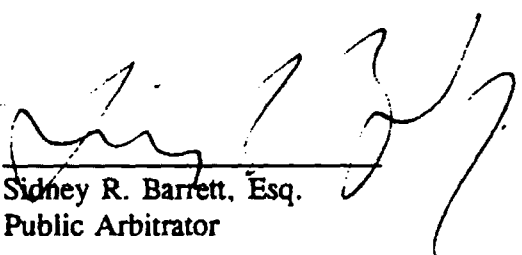
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