

N.A.S.D. AWARD

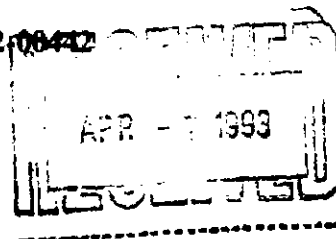
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Martin Rutlege Flynn

Case No. 92-08442



Name of Respondent

J.W. Gant and Associates, Inc.

REPRESENTATION

For Claimant: Martin Rutlege Flynn ("Flynn"): pro se.

For Respondent, J.W. Gant & Associates, Inc., ("J.W. Gant"): Vincent A. O'Brien, Esq.
(Subsequent to the second hearing session, Mr. O'Brien notified the NASD that he was withdrawing as counsel for J.W. Gant-See Other Issues)

CASE INFORMATION

Statement of Claim filed: February 5, 1992. Claimant's Submission Agreement signed: January 9, 1992.

Respondent's Statement of Answer filed: April 8, 1992. Respondent's Submission Agreement signed: April 7, 1992 by J. Patrick Driver on behalf of J.W. Gant.

HEARING INFORMATION

On July 30, 1992, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On November 13, 1992, and February 9, 1993, in Tampa, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent fraudulently and negligently solicited and sold him shares of Vitro Diagnostics ("Vitro"), in March of 1989 and that Respondent was negligent in performing its due diligence with respect to Vitro. Claimant stated that in late June 1989, Respondent informed him that the value of the Vitro stock was worthless.

Respondent denied all allegations of wrongdoing and maintained that Claimant is a sophisticated investor of substantial financial worth who knowingly and voluntarily assumed the inherent risks attendant to investments in the stock market. Respondent stated that on May 2, 1989, Claimant was advised and given the opportunity to sell his Vitro stock at an approximate 30% loss but, that Claimant chose to hold on to the stock thereby failing to mitigate his damages. Respondent further maintained that Claimant's losses, if any, were caused or contributed to by the acts of others over whom Respondent had no control and for whom Respondent was not responsible, or by events and circumstances beyond Respondent's control.

RELIEF REQUESTED

Claimant requested an Award of \$45,000.00.

Respondent requested dismissal of the Claim and that it be awarded its attorneys' fees, costs and expenses of defending and appearing in this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

1. Subsequent to the second hearing session Respondent's attorney withdrew and despite due notice no one appeared on behalf of J.W. Gant. Pursuant to Section 29 of the Code of Arbitration Procedure, this Arbitration Panel proceeded in the absence of J.W. Gant.
2. Jurisdiction exists pursuant to the Uniform Submission Agreement signed by J. Patrick Driver on behalf of J.W. Gant and Section 12 of the Code. Respondent, J.W. Gant being an NASD Member firm at the time this controversy arose.
3. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service upon and notice to Respondent adequate.

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:

Respondents, J.W. Gant & Associates, Inc. is found liable, and shall pay to the Claimant the amount of \$40,000.00.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (one pre-hearing conference x \$300.00, plus three hearing sessions x \$400.00).

Claimant is hereby assessed \$750.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$350.00.

Respondent, J.W. Gant, is hereby assessed \$750.00, payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures


John F. Howes

Public


Michael N. Gonatos

Industry


Thomas E. Greef

Public

Date of Decision: April 7, 1993