

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dante Gillono

92-00778

Names of Respondents

Boettcher & Company,
David R. Steinberg and
Freddi B. Steinberg

REPRESENTATION

Claimant, Dante Gillono was represented by Kenet E. Chareau, Esq., Tucson, Arizona.

Respondents, Boettcher & Co, David R. Steinberg and Freddi B. Steinberg were represented by William D. Nelson, Esq. of Robinson, Waters, O'Dorisio and Rapson, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 4, 1992.

Claimant, Dante Gillono's Submission Agreement was signed on April 2, 1992 by Dante Gillono.

A Joint Statement of Answer was filed with the NASD by Respondents, Boettcher & Co., David Steinberg and Freddi Steinberg on or about June 11, 1992.

Respondent, Boettcher & Co.'s Submission Agreement was signed on April 28, 1992 by Janet L. Reali, Senior Vice-President and Associate General Counsel.

Respondents, David and Freddi Steinberg's Submission Agreements were signed on June 5, 1992.

An Amended Statement of Claim was filed with the NASD on July 21, 1992.

An Amended Statement of Answer was filed with the NASD on August 6, 1992.

A Motion to Dismiss certain of the Claims was filed with the NASD By Respondents on November 20, 1992.

A Response to the Motion to Dismiss was filed with the NASD on December 7, 1992.

A Joint Stipulation was filed with the NASD by the parties on December 4, 1992.

HEARING INFORMATION

The hearing took place in Scottsdale, Arizona on December 9, 1992 for two (2) hearing sessions, December 10, 1992 for two (2) hearing sessions, February 10, 1993 for one (1) hearing session, February 11, 1993 for two (2) hearing sessions and February 12, 1993 for two (2) hearing sessions.

CASE SUMMARY

Claimant, Dante Gillono ("Gillono") alleged violations of the NASD Rules of Fair Practice, violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, violations of the Arizona Securities Act, breach of contract, breach of fiduciary duty, breach of trust and breach of agency and violations of the Arizona Racketeering Statute. Gillono alleged that he opened an account with Respondent, Boettcher & Co. ("Boettcher") in February of 1987 and that by the fall of 1989 he had invested all of his liquid assets with Boettcher. Gillono alleged that Boettcher and Respondent, David Steinberg ("Steinberg") completely disregarded his investment objectives and unreasonable and unnecessarily exposed his capital to the risk of loss. Gillono asserted that the trading in his account was excessive, unsuitable and conducted for the purpose of enhancing sales commissions for Boettcher and Steinberg. In addition, Gillono asserted that Boettcher failed to adequately supervise the conduct of its agent, Steinberg.

These allegations were made in connection with Gillono's purchases of Emerald Homes, a master limited partnership which Gillono asserted was highly speculative. Gillono also maintained that his purchase of 10,000 shares of common stock in Miniscribe was highly speculative. Additional investments Gillono claimed were unsuitable and speculative were Miniscribe calls, Mountain Medical common stock, Tucson Electric Power common stock, Windmere common stock and various options trading which was all done on margin.

Respondents, Boettcher and the Steinbergs denied the allegations of the statement of the claim. Boettcher and the Steinbergs asserted that a number of other stock purchases occurred in Gillono's account which were profitable and the options trading of which he complains was his idea and unsolicited. Boettcher and the Steinbergs asserted various affirmative defenses including but not limited to, failure to state a claim upon which relief could be granted, the

damages if any Gillono suffered were not caused by factors under the control of Boettcher or the Steinbergs, that the claims were barred by estoppel, waiver and acquiescence, the claims are barred by applicable statutes of limitation and Gillono failed to mitigate his damages, if any.

RELIEF REQUESTED

Gillono requested damages pursuant to his amended Statement of Claim in the amount of not less than \$350,000.00, treble damages under the Arizona Racketeering Statute, punitive damages in an amount to be determined by the panel, reasonable attorney's fees, pre and post-award interest, costs and such other relief as the panel deemed just and appropriate.

Boettcher and the Steinbergs requested that the claim, as amended, be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties filed a joint stipulation with the NASD on December 4, 1992 in which it was agreed that Counts 1-4-violations of the NASD Rules of Fair Practice were dismissed, Count 5-violations of Section 10-b and Rule 10b-5 was dismissed in its entirety, Count 6-violations of the Colorado Securities Law was dismissed in its entirety as it pertained to the Emerald Homes purchase only. The parties agreed that they would argue to the panel on the day of the hearing whether the remainder of Gillono's claims under the Colorado Securities Act would be dismissed. The parties also stipulated that they would argue to the panel on the morning of the hearing the issues raised in Respondents' Motion to Dismiss the claim for breach of fiduciary duty. The stipulation also agreed that the Count 10-COCCA was dismissed in its entirety. The parties further agreed that they would argue to the panel on the morning of the hearing the issues raised in Respondents' motion to dismiss Count 11-Claim for punitive damages. The parties also stipulated that they would argue to the panel on the morning of the hearing issues raised in Respondents' Motion to Dismiss relative to claims of Gillono based on churning, fraud, unsuitability and attorney's fees.

On the first day of the hearing pursuant to the Stipulation between the parties, Boettcher and the Steinbergs moved to dismiss the claim. The panel heard argument of the parties' counsel and denied the motion. Again on the third day of the hearing, Boettcher and the Steinbergs moved to dismiss the claims. The panel again denied the motion.

Prior to the third day of the hearing, Gillono requested that his claim be amended again. The panel allowed the amendment over the objection of Boettcher and the Steinbergs.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claim, as amended, asserted by Gillono against Boettcher and the Steinbergs is and shall be and is hereby denied and dismissed in its entirety; and
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit previously deposited with the NASD by Gillono. Boettcher is assessed and shall pay to the NASD additional Forum Fees in the amount of \$8000.00.

Forum Fees were calculated on the basis of \$1000.00 per hearing session for nine (9) hearing sessions. Additional Forum Fees assessed to the parties are payable to the NASD, Inc.

Concurring Arbitrators' Signatures

/S/ William M. Howard
William M. Howard
Public Arbitrator
Chairperson

March 20, 1993
Dated

/S/ Renee P. Roelants
Renee P. Roelants
Public Arbitrator
Panelist

March 19, 1993
Dated

/S/ William L. Olson
William L. Olson
Industry Arbitrator
Panelist

March 20, 1993
Dated

Date Award Served by the NASD: March 31, 1993