

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Edward D. & Lillian M. Woycik

92-00804

Name of Respondent(s)

Mark Allbaugh

REPRESENTATION

For Claimants: Edward D. and Lillian M. Woycik ("the Woyciks"): Mark A. Tepper, Esq.

For Respondent: Mark Allbaugh ("Allbaugh"): Edward J. Marko, Esq. of Marko & Stephany.

CASE INFORMATION

Statement of Claim filed: March 6, 1992. Claimants' Submission Agreements signed: March 3, 1992.

Respondent's Statement of Answer filed: May 7, 1992. Respondent's Submission Agreement signed: April 27, 1992.

HEARING INFORMATION

On January 6 and 8, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged that they are naive, inexperienced, retired, public customers who suffered damages when, despite Claimants' stated investment objectives of safety and income and despite the knowledge of Claimants' financial circumstances, Respondent, Allbaugh, recommended and purchased for their account, unsuitable, speculative, low-priced securities commonly known as "penny stock."

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Respondent denied all allegations of wrongdoing and maintained that Claimants are not altogether unsophisticated investors and that Claimants were apprised by Respondent of the risks associated with the purchase of "penny stock" prior to purchase. Respondent further maintained that Claimant, Edward Woycik, represented to Respondent that he had substantial assets and that all investments were suitable.

RELIEF REQUESTED

Claimants requested an award against Respondent for compensatory damages of \$43,790.00, plus interest at the legal rate of 12% per annum from the date of purchase, attorneys' fees pursuant to Section 57.105, Florida Statutes, punitive damages, the costs of this proceeding, and such other relief as is just and proper.

Respondent requested that Claimants' claims be denied and that the costs of this arbitration be assessed against Claimants including attorney's fees under Florida Statutes 517 and 57.105.

OTHER ISSUES CONSIDERED & DECIDED

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

1. Respondent, Allbaugh, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Claimants' requests for attorney's fees and punitive damages are denied.
3. Respondent's requests for attorney's fees and costs are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,600.00 (four sessions x \$400.00 per session).

1. Claimants are hereby assessed \$800.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$400.00 payable to the National Association of Securities Dealers, Inc.

2. Respondent, Allbaugh, is hereby assessed \$800.00 payable to the National Association of Securities Dealers, Inc.

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

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

Arbitrators' Signatures

/s/
Myron Dunay, Esq.

Public

/s/
Carl J. Hegner

Industry

/s/
Oscar Bobis

Public

Date of Decision: FEBRUARY 25, 1993