

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

John D. Mullen :

Claimant :

CASE #92-01617

AWARD

vs. :

J.W. Gant & Associates, Inc. :

Robyn Lynn Reagan :

Kelly Sutton :

Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 12, 1992, Claimant John D. Mullen who appeared pro Se, alleged that in 1991 he opened an account with Respondent J.W. Gant & Associates, Inc., by and through Gregory Childress, whereby he had a limited number of transactions and subsequently, Mr. Childress informed him he had resigned from Respondent J.W. Gant & Associates, Inc., at which time, Claimant took steps to transfer his account with Mr. Childress. Claimant further alleged that shortly thereafter he received a telephone call from Respondent Robyn Lynn Reagan, a broker with Respondent J.W. Gant & Associates, Inc. and when he did not express any interest in additional transactions, he received several additional telephone calls from brokers at Respondent J.W. Gant & Associates, Inc., at which time, Claimant at no time authorized any additional stock purchases in his account. Claimant contended that on or about January 15, 1992, he instructed Respondent Robyn Lynn Reagan to liquidate certain securities held in his account and did not receive a confirmation of this sale until on or about January 27, 1992, at which time, he also received a confirmation notice of an additional unauthorized purchase of stock. Claimant further contended that he spoke to Respondent Robyn Lynn Reagan on several occasions to rectify the matter and she advised him not to worry about it, that the purchase would be cancelled. Claimant asserted that on January 31, 1992, he received a fax from Respondent Robyn Lynn Reagan whereby she requested that he wire additional funds to Respondent J.W. Gant & Associates, Inc. to cover the trade, at which time, Claimant on or about February 3, 1992 spoke to Respondent Robyn Lynn Reagan whereby he informed her that no funds would be forthcoming for the unauthorized trade and requested to speak to her supervisor.

Claimant further asserted that on February 4, 1992 he spoke to Respondent Kelly Sutton, Supervisor and he indicated that there was nothing he could do to void this transaction. Claimant argued that Respondent Robyn Lynn Reagan's unauthorized trade and Respondents J.W. Gant & Associates and Kelly Sutton's failure to rectify the matter, resulted in losses in Claimant's account.

Respondents, J.W. Gant & Associates, Inc., Robyn Lynn Reagan and Kelly Sutton by and through their counsel David A. Zisser, Esq. of Berliner Boyle Kaplan Zisser & Walter, Denver, Colorado maintained that they dispute that the trade in question was unauthorized, to the contrary, the transactions were authorized by Claimant John D. Mullen whereby a registered principal in the office verified the transactions with the customer, and made contemporaneous notations of that verification. Respondents further maintained that it should be noted that there is no claim that Respondent Kelly Sutton, who was a supervisor in the branch, engaged in any wrongdoing whatever that would warrant any liability for damages. Respondents contended that it is important to note that Claimant admits that a former broker of Respondent, J.W. Gant & Associates, Inc. who left for another firm, accused Respondent J.W. Gant & Associates, Inc. of engaging in improper sales practices. Respondents further contended that the former broker, Mr. Childress, in order to obtain a competitive advantage, has campaigned to defame Respondent J. W. Gant & Associates, Inc. by soliciting groundless customer complaints against them and its current sales force. Respondents asserted that Claimant authorized the transactions in question and hereby deny any liability whatever for Claimant's claim.

RELIEF REQUESTED

Claimant, John D. Mullen requested \$6,307.30 in actual damages plus the amount of \$3,500.00 in punitive damages.

Respondents, J.W. Gant & Associates, Inc., Robyn Lynn Reagan and Kelly Sutton requested the claim be denied.

AWARD

Pursuant to Section 13 of the national Association of Securities Dealers, inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul T. Green was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 6, 1992 by the Respondent J.W. Gant & Associates, Inc. on June 12, 1992 and by the Respondents Robyn Lynn Reagan and Kelly Sutton on July 9, 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. Respondents J.W. Gant & Associates, Inc., Robyn Lynn Reagan and Kelly Sutton are jointly and severally liable and shall pay to the Claimant John D. Mullen the sum of \$6,300.00 in damages.
2. The Claimant's request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant John D. Mullen shall be retained by the NASD, Inc. Respondents J.W. Gant & Associates, Inc., Robyn Lynn Reagan and Kelly Sutton are jointly and severally liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **PAUL T. GREEN**, 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:

9/28/92

DATED BY THE NASD, INC.: September 30, 1992