

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jerome Dipentino

92-01878

Name of Respondents

Dominick & Dominick Incorporated
Jack Mergner, Jr.
Robert Hladek

REPRESENTATION

Claimant Jerome Dipentino ("Claimant") was represented by: Lawrence Gelber, Esq. of the law firm of Beigel and Sandler.

Respondents Dominick & Dominick, Inc. ("Dominick") and Robert Hladek ("Hladek") were represented by: Edward J.M. Little, Esq. of Kavanagh, Peters, Powell and Osnato, Esq.

Respondent Jack Mergner, Jr ("Mergner") was represented by: John B. Madden Jr., Esq. of Arent, Fox, McGarrahan & Heard.

CASE INFORMATION

Statement of Claim filed on: June 2, 1992.

Claimant's Submission Agreement signed on: May 28, 1992

Joint Statement of Answer filed by Respondents Dominick and Hladek on: September 4, 1992.

Respondents Dominick and Hladek's Submission Agreement signed on: July 21, 1992

Respondent Mergner's Statement of Answer filed on: August 4, 1992.

Respondent John Mergner's Submission Agreement signed on: July 22, 1992

HEARING INFORMATION

Hearing Dates/Sessions: June 14, 1993, two sessions
June 15, 1993, two sessions

Hearing Location: NASD offices, Philadelphia, Pennsylvania

CASE SUMMARY

Claimant alleges that he was an unsophisticated investor with no experience in margin transactions to which he was introduced by Respondent Mergner. As a result of discussions between Claimant and Mergner, Claimant purchased in four (4) separate transactions in November, 1991 shares of Mor Flo Industries, Inc., an OTC marginable security ("MORF"). Claimant alleges that he was told that the MORF margin requirement was 35% and not the customary 50% required by Regulation T. {The aggregate MORF purchases exceeded Claimants free balance in his cash account.} Claimant avers that after receipt of a margin call, he spoke with Dominick's margin manager (Hladek) and received contradictory advice; first that Dominick's company policy required 50% cash balances in the margin account and later that the MORF stock was not marginable at all. Being unable to meet Dominick's demand for additional cash in his account, Claimant says he attempted to transfer the margin account to another broker dealer but was sold out before the account could be transferred or other security furnished. Claimant alleges that all Respondents were guilty of securities fraud (Section 10(b) -of the 1934 Act and Rule 10(b)-5, common law fraud, breach of fiduciary duty, breach of duty of good faith and fair dealing, common law negligence SRO Rule violations, breach on contract and violations of the RICO statute.

All Respondents deny any acts of wrongdoing. Respondents Dominick and Hladek believe that Dominick's operations manager of it Bethesda, Maryland office may have informed Respondent Mergner that the MORF stock may have been marginable. Thereafter, these Respondents claim they concluded that Dominick would not margin the MORF stock at all because it was too risky and the stock was too thinly traded. Respondents relied on the margin agreement signed by Claimant as authority for selling out Claimants positions in MORF. As affirmative defenses these Respondents deny any intention to defraud and aver that they complied with applicable SRO Rules. Respondent Mergner alleges that Claimant originated all orders to buy or sell the MORF stock, prior to the margin liquidation. Mergner says that when Claimant inquired about margining the MORF stock, he checked with Dominick's Bethesda operations manager and was advised that it was marginable. He claims to have advised Claimant that the margin requirement was 50%. He denies any involvement in the margin call or the subsequent sellout.

RELIEF REQUESTED

Claimant requested unspecified rescissory monetary damages, treble such damages under RICO, plus interest at an unspecified rate (also trebled under RICO), plus punitive damages in an amount to be determined by the Panel and expenses incurred in pursuing the arbitration. Claimant also sought his attorneys' fees and expenses. At the hearing, Claimant submitted an exhibit specifying his aggregate damages to be \$40,315.00.

All Respondents requested dismissal of the claim and that they be awarded their respective arbitration costs and attorneys' fees.

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

1. That Respondent Dominick & Dominick is liable to Claimant for compensatory damages in the sum of \$16,637.00 with interest thereon at the rate of 7 1/2 % per annum from December 12, 1991 to the date of this award and thereafter at the Pennsylvania legal rate on interest until the award is actually paid.
2. That Respondent Dominick & Dominick is liable to the Claimant and shall pay to the Claimant attorneys' fees and disbursements, for the reasons set forth at the hearing in the respective amounts of \$5,542.66 and \$525.00. Said sums to bear interest at the Pennsylvania legal rate from the date of this award until actually paid.
3. Claimant's request for relief under RICO was withdrawn at the hearing at it is therefore denied as is Claimant's request for punitive damages.
4. Respondents' requests for attorneys' fees are denied.

5. All claims against the individual Respondents Robert Hladek and Jack Mergner are dismissed.
6. All parties to bear their costs and expenses except as specified herein.

FORUM FEES

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

4 hearing sessions x \$600 hearing session deposit = \$2400.

Claimant is assessed forum fees in the amount of \$600. Claimant is entitled to offset this amount with his hearing session deposit. Therefore no monies are due from the Claimant.

Respondents Dominick & Dominick shall therefore pay to the National Association of Securities Dealers, Inc. the sum of \$1800 and remit to Claimant his \$600 hearing session deposit.

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

Concurring Arbitrator's Signature

Name

Public/Industry


Charles H. Boyd, Esq.

Date of Decision: July 30, 1993

5. All claims against the individual Respondents Robert Hladek and Jack Mergner are dismissed.
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Name

Public/Industry


Steven T. Stern, Esq.

Date of Decision: July 30, 1993.

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Concurring Arbitrator's Signature
Name

Public/Industry

Michael J. Shalley
Michael J. Shalley, Esq.
Chairman

Date of Decision: July 30, 1993.