

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

George and Paul C. Zizak

92-02036

Name of Respondents

Summit Investment Corp.
Kevin P. Harris

REPRESENTATION

For Claimants: Mark Briol, Esq. and Greg Wilmes, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

For Respondents: Ann Exline Starr, Esq. of Summit Investment Corporation, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: June 17, 1992. Claimant's Submission Agreement signed on: May 28, 1992.

Joint Statement of Answer filed by Respondents on: August 21, 1992. Respondents' Submission Agreement signed on: July 16, 1992.

HEARING INFORMATION

Hearing Date/Sessions: March 11, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants George Zizak and Paul Zizak ("Zizak") alleged that Respondent Summit Investment ("Summit"), through its representative, Respondent Kevin Harris ("Harris") made

unsuitable investments in high-risk, speculative penny stocks for Zizak. Zizak alleged that Harris bought 3,600 additional shares of Masstor Systems stock, 6000 shares of Compuscan stock (which changed its name to Enercon Data Corp.), and 1500 shares of Lan Systems, Inc. Zizak alleged that he had a net loss on Masstor Systems, that Compuscan (Enercon) is no longer in business and the stock is now worthless, and that Lan Systems filed for bankruptcy, and its stock is also now worthless. Zizak further alleged that Harris and Summit charged Zizak excessive commissions and fees with respect to his investments, in violation of the NASD's 5 % policy.

Respondents Harris and Summit denied that the stocks at issue are "penny stocks." Harris and Summit alleged that the stocks are NASDAQ listed and are not "penny stocks." Harris and Summit further alleged that Zizak made all of his own investment decisions after disclosures about the stocks were made to Zizak. Harris and Summit alleged that Zizak directed, authorized, and ratified the transactions.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$19,434.28, punitive damages in the sum of \$19,434.28, attorney's fees, interest, costs, disbursements and expenses, and such other relief as the arbitrators shall deem just and equitable.

Respondents requested that the Statement of Claim be dismissed with prejudice, and that they be awarded their costs and disbursements, including reasonable attorney's 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.

Respondents filed a Section 15 Motion pursuant to the Code of Arbitration Procedure on November 2, 1992. Claimants filed a response thereto on November 12, 1992. Respondents filed a Reply on December 7, 1992 in which they withdrew their Section 15 Motion on the basis that Claimants were no longer asserting claims for investments (1,125 shares of Masstor Systems purchased on May 7, 1986) purchased over six years ago.

Respondents Summit Investment Corporation and Kevin Harris filed a request to Amend their Statement of Answer and Claimants George Zizak and Paul Zizak filed a response thereto. The panel denied the request to Amend.

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. Respondents Summit Investment Corporation and Kevin Harris shall be and hereby are jointly and severally liable for, and shall pay to the Claimants, George and Paul Zizak, actual damages, which includes interest, in the amount of Twenty Three Thousand Five Hundred Dollars and No Cents (\$23,500.00);

2. The request for punitive damages is denied;

3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for under Forum Fees set forth below.

FORUM FEES

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


2 sessions X \$400 = \$800 minus hearing session deposit of \$400 = net \$400 due.

Forum fees Assessed Against: Respondent Summit Investment Corporation and Kevin Harris, jointly and severally, payable to the NASD.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

5/18/93


Katherine M. Merrill
Presiding, Public Arbitrator

James P. Trainor, Jr.
Public Arbitrator

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Michael J. Madden
Industry Arbitrator

Date Award Served By The NASD: 3-26-93