

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Larry A. Richardson; Joan Richardson;
Jolar Ltd.

92-02043

Name of Respondent

J.W. Gant and Associates, Inc.

REPRESENTATION

For Claimants: Larry A. Richardson, Joan Richardson and Jolar Ltd. were represented by Anne Marie Finch, Esq. of Thompson & Knight, P.C., located in Houston, Texas.

For Respondent: J.W. Gant and Associates, Inc. did not appear at hearing.

CASE INFORMATION

Statement of Claim filed: June 19, 1992.

Claimants Larry A. Richardson and Joan Richardson's Submission Agreement signed on: June 16, 1992.

Claimant Jolar Ltd.'s Submission Agreement signed on: June 16, 1992 by Larry A. Richardson and Joan Richardson, Jolar, Ltd.

Statement of Answer filed by Respondent J.W. Gant and Associates, Inc. on: September 18, 1992.

Respondent J.W. Gant and Associates, Inc.'s Submission Agreement signed on: September 16, 1992 by Frank Palumbo, President, J.W. Gant and Associates, Inc.

Motion to Preclude Answer pursuant to Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure filed by Claimants on: August 17, 1992.

Motion to File an Amended Statement of Claim filed: March 23, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: April 19, 1993 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants Larry A. Richardson, Joan Richardson and Jolar, Ltd. (collectively, "Claimants") alleged that Respondent J.W. Gant and Associates, Inc. ("Gant") engaged in the following conduct: misrepresented the values, quality and growth potential of several common stocks; engaged in "churning"; made unauthorized purchases of stock for Claimants individual and corporate accounts; purchased stocks that were unsuitable given Claimants' investment objectives; engaged in high pressure sales tactics involving numerous phone calls by several account representatives; mismanaged the accounts; and engaged in a scheme involving 'market makers' and improper "crosses" to generate double commissions by playing the bid and ask prices between customers. Based upon these allegations, Claimants' asserted claims for Federal Securities Laws violations under Rule 10b-5, promulgated under Section 10b of the Securities Exchange Act of 1934; for deceptive practices, common law fraud and negligence; for violation of the state Blue Sky securities law, Article 581-33 of the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-33; and for violation of the civil provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Sec. 1964.

Respondent Gant denied the material allegations of the Statement of Claim.

RELIEF REQUESTED

Claimants requested entry of an award against Respondent for actual damages in the sum of approximately \$118,068.69; punitive damages in the minimum amount of \$354,206.07; costs and attorneys' fees.

Respondent requested that an award be entered denying the Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent J.W. Gant and Associates, Inc. did not appear at hearing, but filed a Statement of Answer and Submission Agreement. Upon review of the filings and the presentation of Claimants, the Panel has determined that Respondent J.W. Gant received Notice of the time and

place of hearing pursuant to Section 26 of the NASD Code of Arbitration Procedure, and that pursuant to Section 29 of the NASD Code of Arbitration Procedure, the arbitration hearing would continue in Respondent's absence.

The Panel, upon review of the Motion to Preclude, determined that the Motion would be denied. No response to the Motion was filed.

The Panel, upon review of the Motion to Amend filed by Claimants, determined that the Motion would be granted and the First Amended Statement of Claim was accepted by the panel.

The parties that appeared at the hearing 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 appearing at the hearing 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. Respondent J.W. Gant & Associates, Inc. is liable for and shall pay to Claimants Larry A. Richardson, Joan Richardson and Jolar, Ltd. the sum of \$118,108.69 as actual damages, plus interest at the rate of 6% per annum accruing from June 15, 1992 until said sum is paid in full;
2. In addition, Respondent J.W. Gant and Associates is liable for and shall pay to Claimants Larry A. Richardson, Joan Richardson and Jolar, Ltd. the sum of \$118,108.69 as punitive damages. In determining to award punitive damages to Claimants, the arbitrators considered the arguments of counsel, as well as the elements of common law fraud, and determined that there was authority to award punitive damages to the Claimants;
3. Furthermore, Respondent J.W. Gant and Associates, Inc. is liable for and shall pay to the Claimants, Larry A. Richardson, Joan Richardson and Jolar, Ltd. the sum of \$10,162.00 as attorneys' fees, \$1,214.97 as costs and \$2,733.72 as expert witness fees. In determining to award attorneys' fees, the panel considered the arguments of Claimants, as well as the provisions of the Texas Securities Act, and determined that authority existed for an award of attorneys' fees to Claimants.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Hearing Session x \$750.00 per session = \$750.00.

The National Association of Securities Dealers, Inc. shall retain \$200.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Claimants, Larry A. Richardson, Joan Richardson and Jolar, Ltd. Respondent J.W. Gant and Associates, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$750.00.

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

Concurring Arbitrators' Signatures

Name

Date

Patrick Lanier, Esq.
Patrick Lanier, Esq.
Public Arbitrator
Chairperson

July 26, 1993

Antoinette M. Romano
Antoinette M. Romano
Public Arbitrator

July 23, 1993

James Mervin Benson, Jr., Esq.
James Mervin Benson, Jr., Esq.
Industry Arbitrator

July 23, 1993

For NASD Use Only

Date of Service of Award: 7-27-93