

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Joseph A. Maguire

NASD Arbitration
No. 92-02116

Name of Respondent

David Lutz

REPRESENTATION

For Claimant: In Pro Se

For Respondent: In Pro Se

CASE INFORMATION

Statement of Claim filed: June 24, 1992

Claimant's Submission Agreement signed: November 26, 1991

Statement of Answer filed by Respondent: September 15, 1992

Respondents' Submission Agreement signed:

HEARING INFORMATION

Hearing Dates / Sessions: March 16, 1993 - One Session *
July 12, 1994 - One Session **

Hearing Location: Los Angeles, California *
Via Telephonic Conference Call **

CASE SUMMARY

Claimant, Joseph A. Maguire (Maguire), alleged that Respondent, David Lutz (Lutz), sold Maguire "penny stocks" when he knew or should have known that said investments were unsuitable in light of Maguire's financial position and health problems.

Respondent alleged that Maguire represented himself as a sophisticated investor in stocks and real estate, that he knew nothing about Maguire's health problems and that all purchases were unsolicited.

RELIEF REQUESTED

1. Claimant seeks to recover compensatory damages of \$10,000.00.
2. Respondent seeks dismissal of the claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On March 16, 1994, the date set for the original hearing, Claimant, Joseph A. Maguire, was served with notice of the time and the place of the hearing by registered mail, return receipt requested. Said notice was returned from the Postal Service marked "refused". The arbitrator and the Respondent attempted to contact Claimant by telephone at the number given to the Association but said number was on referral to another number. That number was called but the party answering disclaimed any knowledge of Claimant. The arbitrator determined that the Claimant had voluntarily avoided service and therefore conducted the hearing in his absence. The order and award were served on the parties.

Subsequent to March 6, 1994, the Association was contacted by Mr. Maguire who claimed he was never served with notice of the hearing and that he had informed the Association of his change of address and demanded a reopening of the hearing. The Association contacted the arbitrator who agreed to reopen the hearing if Claimant was willing to pay the Respondent's expenses for a second appearance at the Los Angeles situs. In order to avoid the incurrence of additional expenses for all involved, the parties and the arbitrator agreed to have the hearing conducted by telephone. The hearing was held on July 12, 1994.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim of Claimant, Joseph A. Maguire, against Respondent, David Lutz, is dismissed.
2. The parties shall each bear their respective costs and fees.
3. The NASD shall retain all fees and deposits.

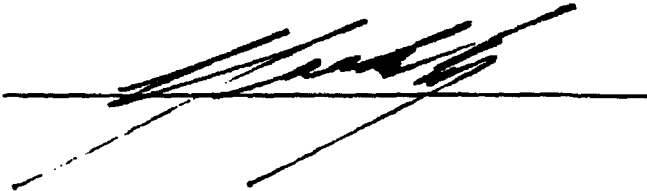
FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, no additional forum fees are assessed.

ARBITRATOR

Name Public / Industry
Gilbert E. Haakh, Esq. Public Chairperson

Concurring Arbitrator's Signatures

A handwritten signature in black ink, appearing to read 'Gilbert E. Haakh', is written over a horizontal line. The signature is stylized with long, sweeping strokes.

Date Served: 08/31/94