

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Rocky Romero

and

92-02293

Name of Respondents

Rauscher Pierce Refsnes, Inc. and
John R. Johnston

REPRESENTATION OF PARTIES

Claimant Rocky Romero was represented by Kelly Utsinger, Esq., Gerald Bybee, Esq. and Gavin Gadberry, Esq. of Underwood, Wilson, Berry, Stein & Johnson, P.C., Amarillo, Texas.

Respondent Rauscher Pierce Refsnes, Inc. was represented by Bruce W. Collins, Esq. of Carrington, Coleman, Sloman & Blumenthal, Dallas, Texas and James T. Ritt, Esq. of Rauscher Pierce Refsnes, Inc., Dallas, Texas.

Respondent John R. Johnston was represented by George W. Dahnke, Esq. of Hastie and Kirschner, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about July 10, 1992. Submission Agreement of Claimant Rocky Romero was signed on June 23, 1992.

Statement of Answer of Respondent Rauscher Pierce Refsnes, Inc. was filed on or about November 20, 1992. Submission Agreement of Respondent Rauscher Pierce Refsnes, Inc. was signed on November 20, 1992 by James T. Ritt, Esq.

Statement of Answer of Respondent John R. Johnston was filed on or about September 11, 1992. Submission Agreement of Respondent John R. Johnston was signed on September 1, 1992.

HEARING INFORMATION

The hearing was held on Wednesday, April 14, 1993 for two (2) sessions, Thursday, April 15,

1993 for two (2) sessions and Friday, April 16, 1993 for three (3) sessions in Dallas, Texas for a total of seven (7) sessions.

CASE SUMMARY

Claimant alleged that Respondents Rauscher Pierce Refsnes, Inc. ("Rauscher") and John R. Johnston ("Johnston") (collectively as "Respondents") engaged in deceptive trade practices, negligent misrepresentation, fraud, negligence, violations of Federal and State securities laws, breach of contract, breach of fiduciary duty, and misappropriation or conversion. In the Statement of Complaint, Claimant specifically alleged that Johnston as an agent of Rauscher fraudulently induced Claimant to execute documents which authorized the transfer of his securities accounts to Rauscher. One of the documents executed by the Claimant was a power of attorney which was misrepresented to him. Romero stated that Respondent Johnston assured him that the power of attorney was only necessary to correct Romero's signature on account transfer documents.

Respondent Rauscher denied the allegations against it set forth in the Statement of Claim. Rauscher specifically stated that it had no knowledge that Rick Stockton was engaged in any wrongdoing in his dealings with Romero, if any, but understood that Stockton was acting as Romero's financial advisor in making investment decisions for him.

Respondent Johnston denied the allegations against him set forth in the Statement of Claim and asserted the affirmative defense that the claims are barred by the applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the approximate amount of \$519,000.00; exemplary, punitive or additional damages of a minimum of \$1,500,000.00; reasonable attorney's fees; pre-judgment and post-judgment interest at the maximum rate allowed by law; costs of arbitration; and such other relief to which he may be entitled, including but not limited to rescission of the contracts.

Respondent Rauscher requested that the arbitration panel render an award that Claimant Rocky Romero recover nothing on his claims, that such claims be dismissed with prejudice, and that Rauscher recover its costs and attorney's fees, in addition to such other relief to which it may be justly entitled.

Respondent Johnston requested that the claims asserted against him be denied.

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 original(s) 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 Rauscher Pierce Refsnes, Inc. shall be and hereby is liable for and shall pay to the Claimant Rocky Romero the sum of \$198,000.00 (one hundred ninety eight thousand dollars).
2. Interest at the rate of 5% per annum is awarded on the above stated sum from and inclusive of January 5, 1990 to and inclusive of the date this award is paid in full.
3. Respondent Rauscher Pierce Refsnes, Inc. shall be and hereby is liable for and shall pay to the Claimant Rocky Romero the sum of \$3,000.00 (three thousand dollars) as costs and \$68,250.00 (sixty eight thousand two hundred fifty dollars) as attorney's fees. In awarding costs and attorney's fees, the undersigned arbitrators have considered the statutory claims set forth in the Statement of Claim in addition to the Texas Arbitration Act.
4. All claims asserted against Respondent John R. Johnston shall be and hereby are dismissed in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Respondent Rauscher Pierce Refsnes, Inc. shall pay to the N.A.S.D. the sum of \$6,000.00 as forum fees and shall pay to the Claimant Rocky Romero the sum of \$1,000.00 as reimbursement of the hearing session deposit.

N.A.S.D. Arbitration No. 92-02293
Award Page 4 of 4

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Howard V. Tygrett, Esq.
Howard V. Tygrett, Jr., Esq.
Public Arbitrator, Presiding Chair

May 16, 1993

s/ Arvel G. McCulloch
Arvel G. McCulloch
Public Arbitrator

May 18, 1993

s/ David L. Baker
David L. Baker
Industry Arbitrator

May 18, 1993