

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John C. Gilhooley

92-02396

Names of Respondents

Westport Resources Investment Services,
John Adams Vaccaro
First Eastern Equity Corp., Inc.
Sperber Adams & Co.
Robert Parker

REPRESENTATION

For Claimant, John C. Gilhooley ("Gilhooley"): Harry W. Haskins, Esq. of Sarasota, Florida.

For Respondents/Third-party Claimants: Westport Resources Investment Services ("Westport") and John Adams Vaccaro ("Vaccaro"): Thomas M. Campbell, Esq. of Smith Campbell & Paduano, New York, New York.

For Third-party Respondents, First Eastern Equity Corp., Inc. ("First Eastern") and Robert Parker ("Parker"): Stanley T. Padgett, Esq. of Alpert, Josey & Hughes, Tampa, Florida.

For Third-party Respondent, Sperber Adams & Co. ("Sperber"): Lewis J. Sperber of Sperber Adams & Co. (This party did not appear and was not represented at the hearing-see "Other Issues").

CASE INFORMATION

Statement of Claim filed: 7/1/92 and amended 8/10/92.

Claimant's Submission Agreement signed on: 2/12/92.

A joint Statement of Answer and Third-party Claim filed by Respondents/Third Party Claimants, Westport and Vaccaro on: 10/12/92 and amended on 10/19/92.

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Respondent/Third-party Claimant, Westport's, Submission Agreement and Corporate Acknowledgment signed on: 10/14/92 by John Adams Vaccaro on behalf of the firm.

Respondent/Third-party Claimant, Vaccaro's Submission Agreement signed on: 10/14/92.

A Statement of Answer of Third-party Respondents, First Eastern and Parker filed on: 12/4/92.

Third-party Respondents, First Eastern and Parker did not file Submission Agreements.

A Statement of Answer of Third-party Respondent, Sperber Adams filed: 11/5/92

Third-party Respondent, Sperber Adams' Submission Agreement/Corporate Acknowledgment signed on: 11/23/92 by Lewis A. Sperber on behalf of the firm.

HEARING INFORMATION

Hearing Date/Sessions: 9-15-94/two (2) sessions.
9-16-94/three (3) sessions.

Hearing Location: Tampa, Florida

CASE SUMMARY

Claimant alleged that sometime during 1986, he sought investment and financial advice from Westport through its broker, Vaccaro, who represented to Claimant that they would provide investment advice and services pursuant to Claimant's investment objectives. Claimant stated that his primary investment objectives were the preservation of principle, income and growth and that he stressed the importance of the preservation of such principle contributions and generation of income by requesting the brokers' guidance on investing in safe and secure securities. Claimant further alleged that in 1991, during a review process it was revealed to him that the limited partnerships in his Westport account had no collateral value and that he had specifically been told by Vaccaro that such limited partnerships would provide monthly income in addition to tax advantages. Claimant alleged that as a result of the relationship between himself and Respondents, Westport and Vaccaro, through their employees, representatives and agents, took available funds of the Claimant and effected unsuitable and speculative investments resulting in loss of principle.

Respondents/Third-party Claimants, Westport and Vaccaro, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Westport did not exist at the time the two investments were made and, therefore, could not possibly have any involvement in or responsibility for the investments at issue or the alleged damages incurred. Westport and Vaccaro contended that the Statement of Claim should be dismissed because the claims are untimely; that the PSVI investment was made, and any alleged cause of action with respect thereto arose, in May, 1986, more than six years prior to filing of the Statement of Claim; that claims with respect to this investment are thus ineligible for submission pursuant to NASD Code Section 15; that both the PSVI and the RDAM investments were made in 1986, at which time Claimant was fully aware and approved of the investments and their attendant risks and rewards; that the investments also were suitable for Claimant and met his investment objectives of the time, thus, any possible cause of action relating to these investments arose in 1986 and are barred by the statute of limitations and repose under applicable Florida Law; that the Statement of Claim fails to adequately plead any cause of action whatsoever and, because Claimant has chosen to continue to hold the investments and retain their benefits, no compensable losses have accrued which could be awarded even if a valid claim were properly pleaded and proved. Respondents/Third-party Claimants, Westport and Vaccaro, further asserted a Third-party claim for indemnification and contribution against First Eastern, Sperber Adams and Parker.

Third-party Respondents, First Eastern and Parker, denied all allegations of wrongdoing contained in the Third-party Claim and stated that Vaccaro was Claimant's account executive and that Claimant's testimony at the final hearing confirmed that he relied on his long time friend, confidant and account executive, Vaccaro. Respondents, First Eastern and Parker maintained that there is no factual or legal basis for any award against them.

Third-party Respondent, Sperber Adams, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant's claims are time-barred and that the investment in Public Storage Partners, VI. was suitable. Sperber Adams denied responsibility for Claimant's investment in the Resource Development Gas Partners because, this investment was made by Claimant through another broker/dealer.

RELIEF REQUESTED

Claimant requested damages including attorney's fees, statutory interest, costs, including arbitration filing fees and expert witness fees, treble damages and punitive damages. Additionally, Claimant requested rescission of the sales pursuant to Chapter 517, Florida Statutes, damages appropriate under the Florida Civil Remedies Act, the Federal Arbitration Act, and "Miley" damages.

Respondents/Third-party Claimants, Westport and Vaccaro requested an award in their favor and against the Third-party Respondents providing that the Third-party Respondents, Sperber Adams and Parker are liable, jointly and severally, for any damages awarded to Claimant on his claims relating to the PSVI investments and that Third-party Respondents, First Eastern and Parker are liable, jointly and severally, for any damages awarded to Claimant on his claims relating to the RD investment; and for such other and further relief as necessary and appropriate to ensure that no liability whatsoever remains to be discharged by Third-party Claimants.

Third-party Respondents, First Eastern and Parker requested dismissal of all claims against them.

Third-party Respondent, Sperber Adams, requested dismissal of all claims against it.

OTHER ISSUES CONSIDERED & DECIDED

1. By letter dated December 20, 1993 and signed by Lewis J. Sperber, the NASD was informed that Sperber Adams "ceased business on May 20, 1993" and further "will rely on the answer which it filed and the positions taken by John Adams Vaccaro and Westport Resources".
2. The parties 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 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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents/Third-party Claimants, Westport and Vaccaro, are found liable, jointly and severally, and shall pay to Claimant damages in the amount of \$75,000.00 inclusive of interest.
2. Respondents/Third-party Claimants, Westport and Vaccaro, are further found liable, jointly and severally, and shall pay to the Claimant \$5,000.00 in costs.
3. Third-party Respondents, First Eastern, Sperber Adams and Parker are found liable, jointly and severally, and shall pay to Respondents/Third-party Claimants, Westport and Vaccaro, the amount of \$40,000.00 inclusive of interest.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,000.00 (five (5) hearing sessions X \$1,000.00).

1. The Claimant is hereby assessed forum fees in the amount of \$1,666.66 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance of \$666.66 payable to the NASD, Inc.

2. Respondents/Third-party Claimants, Westport and Vaccaro, are hereby jointly and severally assessed forum fees in the amount of \$1,666.67 for which the NASD shall retain the \$750.00 previously deposited by them leaving a balance due to the NASD of \$916.67.

3. Third-party Respondents, First Eastern, Sperber Adams and Parker, are hereby assessed forum fees, jointly and severally, in the amount of \$1,666.67 payable to the NASD, Inc.

4. The NASD shall retain the non-refundable filing fees paid by Claimant and Respondents/Third-party Claimants, respectively, in the amounts of \$250.00 and \$500.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

George S. Coit, Jr., Esq.

Public/Chairperson

/s/

Linda Oldt

Industry/Panelist

/s/

Richard I. Funkey

Industry/Panelist

Date of Decision: October 31, 1994