

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jan Gryglak

No. 92-02926

Name of Respondents

Royce Investment Group, Inc.
Ameritrade
Sean O'Hara

REPRESENTATION OF PARTIES

Claimant Jan Gryglak appeared pro se.

For Respondents: Jeffrey J. Scott, Esq. of Krys, Boyle, Golz, Reich & Freedman, Denver, Colorado.

CASE INFORMATION

Statement of Claim filed: August 31, 1992.

Claimant's Submission Agreement signed on: August 20, 1992.

Statement of Answer filed by Respondent, Ameritrade on: November 30, 1992.

Respondent Ameritrade's Submission Agreement signed on: October 27, 1992.

Joint Statement of Answer filed by Respondent, Royce Investment Group, Inc. and Sean O'Hara on: November 12, 1992.

Respondent Royce Investment Group, Inc.'s Submission Agreement signed on: October 27, 1992.

Respondent Sean O'Hara's Submission Agreement signed on: October 26, 1992.

HEARING INFORMATION

Hearing date: March 23, 1993. One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant, Jan Gryglak ("Claimant") alleged that after he had transferred his account to First Choice in May of 1991, Respondent Sean O'Hara ("O'Hara"), an employee of Respondent Royce Investment Group, Inc. ("Royce") contacted Claimant to purchase 1,000 shares of EQUIVEST (the "Shares"). Claimant stated that he had agreed to purchase the Shares, and also stated that he told O'Hara that a new account needed to be opened. In September of 1991, Claimant alleged that his broker at First Choice had contacted him asking why Claimant had transferred the Shares from Royce to First Choice. Claimant asserted that he had not signed any transfer documents. Claimant further asserted that immediately thereafter, he had attempted to contact O'Hara. In October of 1991, Claimant stated that O'Hara had finally returned the numerous calls made to him. O'Hara allegedly told the Claimant that the matter of the transfer was still under investigation. Claimant also stated that based on O'Hara's recommendation, he purchased 2,000 shares of NYTEST. Claimant further alleged that in January of 1992, the matter of the transfer of the shares was still unresolved, and also alleged that the NYTEST shares had also been transferred to First Choice without authorization. Claimant went on to allege that after informing O'Hara of the transfers, O'Hara had informed Claimant that he needed to sign forms authorizing the transfer of his stocks back to Royce. Claimant then stated that he had signed another authorization form to transfer the stocks back to First Choice. Lastly, Claimant stated that since that time, he has been trying to get back his certificates.

In its Answer, Respondent Ameritrade ("Ameritrade") denied the allegations contained in the Statement of Claim. Ameritrade also asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim for relief against Ameritrade and should be dismissed.
2. Ameritrade merely acted as the clearing broker for Royce and has no liability to its customer, the Claimant. The Statement of Claim against Ameritrade should be dismissed.
3. Ameritrade merely performed its contracted-for-services as bookkeeper for the accounts of its introducing broker, Royce, and therefore Ameritrade has no liability to the

customers of its introducing broker. See Katz v Financial Clearing & Services Corp., CCH Fed. Sec. Law Rep. Paragraph 96,626 (S.D.N.Y. April 30, 1992).

4. The Statement of Claim is barred by the doctrines of estoppel, laches, and ratification and waiver.

5. The Statement of Claim is barred by the applicable statute of limitations.

In their joint Answer, Royce and O'Hara denied the allegations contained in the Statement of Claim. In addition, Royce and O'Hara asserted the following affirmative defenses:

1. Claimant failed to mitigate his damages, if any,. Claimant should have sold his NGT and Extern securities and/or repurchased the Shares and NYTEST securities.

2. In the event that Royce and/or O'Hara are found liable to the Claimant, they should receive credit for the monies realized by the Claimant upon the sale of the Shares and his NYTEST investment, notwithstanding that the proceeds were used for an allegedly unauthorized purchase of securities.

RELIEF REQUESTED

Claimant requested: 1,000 shares of EQUIVEST FINL UTS 1 CMN & 1 PFD SER CL A CONV. 12.5 %, or the equivalent of \$6,250.00 plus four periods of dividends totaling \$375.00; 2,000 shares of NYTEST Environmental, Inc. or the equivalent of \$6,500.00; punitive damages equalling \$8,000.00; and clerical fees equalling \$875.00.

Ameritrade requested that the Statement of Claim be dismissed and that it be awarded its costs and attorneys' fees.

Royce and O'Hara requested an award dismissing the Statement of Claim together with costs and disbursements, and attorneys' fees of this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, Jan Gryglak's claims against Respondent Ameritrade are hereby denied and dismissed with prejudice.
2. Claimant, Jan Gryglak's claim for punitive damages is hereby denied and dismissed with prejudice.
3. Respondents Royce Investment Group, Inc. and Sean O'Hara are jointly and severally liable for, and shall pay to Claimant, Jan Gryglak, the difference, if any, between the aggregate purchase price of the 1,000 shares of EQUIVEST and the 2,000 shares of NYTEST (\$8,757.00) and market value of those 3,000 shares as of March 23, 1993, if greater, as satisfaction of all of Claimant's claims herein.
4. Respondents', Ameritrade's, Royce Investment Group, Inc.'s, and Sean O'Hara's, request for attorneys' fees are denied and dismissed with prejudice.

OTHER COSTS

Respondents, Royce Investment Group, Inc. and Sean O'Hara are jointly and severally liable for, and shall pay to Claimant, Jan Gryglak the sum of \$300.00 as reimbursement for his hearing deposit paid to the NASD on filing his claim.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing session X \$300.00 = \$300.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimant.

ARBITRATOR'S SIGNATURE

Dated:

March 23, 1993

/s/Robert W. Edler
Robert W. Edler
Presiding Chair
Public Arbitrator

Date of Service by the NASD: March 25, 1993