

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Paul J. Pantano

92-03514

Name of Respondents

J.W. Gant and Associates, Inc.
Y. Alex Hart

REPRESENTATION

For Claimant Paul J. Pantano ("Claimant"): James E. Carney, Esq. of the law firm of Carney & Carney

For Respondent Y. Alex Hart ("Hart"): William J. Bethune, Esq. of the law firm of Marsh Fleischer & Quiggle

Respondent J.W. Gant and Associates, Inc. ("Gant") was not represented.

CASE INFORMATION

Statement of Claim filed: October 15, 1992

Claimant's Submission Agreement signed on: October 7, 1992

Statement of Answer filed by Hart on: January 15, 1993

Hart's Submission Agreement signed on: January 8, 1993

Gant neither filed an answer or a submission agreement.

HEARING INFORMATION

Hearing Date/Sessions: October 18, 1993 - two sessions

Hearing Location: NASD Offices - Philadelphia, Pennsylvania

CASE SUMMARY

Claimant alleged, among other things, that he was an investor with limited knowledge of securities and with limited excess income to invest. Claimant alleged that his investment objective was growth with some risk, but not speculation. Claimant alleged that Hart induced him (Claimant) to purchase unsuitable investments which were risky and thinly traded. Claimant alleged that Hart used high pressure sales tactics to induce Claimant to trade. Claimant alleged that Hart made material misrepresentations and failed to disclose the risks inherent in investments he recommended. Claimant alleged that the trading strategy employed by Respondents Hart and Gant was unsuitable and motivated for the Respondents benefit at the expense of the Claimant. Claimant alleged that Respondents churned his account and that Gant failed to supervise either Claimant's account or Hart.

Hart maintained that Claimant was a sophisticated investor with previous investment experience. Hart maintained that before Claimant purchased an investment Hart advised Claimant of the risks and benefits associated with each investment. Hart maintained that each investment was suitable for Claimant and that Claimant's account was not churned. Respondent maintained that Claimant timely received all monthly account statements and confirmation slips. Hart maintained that Claimant failed to complain about the investments in his account in a timely fashion. Hart maintained that he kept Claimant apprised of his investments and maintained that all securities received by Claimant were listed on NASDAQ and subject to SEC reporting requirements. Hart maintained that the information provided to Claimant were taken from publicly filed documents and published news sources.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$20,878.00 plus interest and reasonable attorney's fees.

Hart requested that Claimant's claim be dismissed in its entirety and that all costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

That Gant's membership with the NASD was canceled on August 17, 1992. That all mail sent to Gant was returned as "[m]oved left no address, unable to forward, return to sender". Therefore, the Presiding Arbitrator determined

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that service of Claimant's claim was not properly effectuated against Gant and did not exercise jurisdiction over Claimant's claim against Gant.

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. That Claimant's claim against Hart is denied in its entirety.
2. That the parties shall bear their respective costs including attorney's fees, except as specifically stated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fee(s) are assessed.

2 hearing sessions x \$300 = \$600

That Claimant and Hart shall equally bear the hearing session fees so that Claimant is assessed hearing session fees in the amount of \$300; however, Claimant is entitled to offset this amount with his hearing session fee of \$300 previously deposited so that no additional fees are required from Claimant.

Hart shall pay forum fees in the amount of \$300.

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

Arbitrator's Signature

Name

Public/Industry


Harold A. Stein

Date of Decision: OCTOBER 22, 1993

NASD Date of Decision: November 4, 1993