

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank J. Barnes

Case No. 92-04170

Name of Respondents

Summit Investment Corporation
Steven J. Henricks

REPRESENTATION

For Claimant, Frank J. Barnes ("Barnes"): Michael G. Flanagan, Esq.

For Respondents, Summit Investment Corporation ("Summit") and Steven J. Henricks ("Henricks"): Frank A. Taylor, Esq. of Popham, Haik, Schnobrich & Kaufman.

CASE INFORMATION

Statement of Claim filed: December 14, 1992. Claimant's Submission Agreement signed: December 14, 1992. Respondent's, Summit and Henricks, Statement of Joint Answer filed: February 4, 1993. Respondent's Submission Agreements signed: February 4, 1993 by G. James Spinner as President of Summit Investment Corporation.

Respondent, Steven Henricks, filed a Statement of Answer but did not sign a Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On November 1, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting 1 session was conducted (via telephone conference call) with arbitrator.

On November 9, 10, 11, 1993 and January 17, and 18, 1994, in Fort Lauderdale, Florida hearings lasting 12 sessions were conducted.

CASE SUMMARY

Claimant alleged damages caused by Claimant's Investment in a Printron Private Placement. Claimant alleged Respondents violated the SEC Act of 1934 and implementing rule 10-b5 (fraud in connection with the purchase and sale of securities, misrepresentation of expertise, ignoring customer's investment goals through placing Claimant in unsuitable, speculative, high-risk investments); civil damages pursuant to the "Rico Statute, Title VII of the Organized Crime Control Act of 1970.

Respondents denied that there were any improprieties and alleged that Claimant rescinded his second purchase and pursued legal remedies for perfection of that rescission through the United States District Court, Southern District of New York. The only investment at issue is Claimant's initial \$10,000 investment in Printron.

Respondents also asserted that the investments were suitable for Mr. Barnes; that Claimant was an accredited and sophisticated investor and was suitable for the transactions; that he completed and executed two subscription agreements which contained full and accurate disclosure; that due diligence was performed by both Respondents and Claimant and that the Claimant received, prior to his investment decisions, private placement memoranda which contained full and accurate disclosure.

Respondents alleged that Claimant has failed to mitigate his damages and, in fact, did not suffer any damages because he could sell his Printron common stock on the market at a profit; that after Claimant commenced this arbitration, he purchased an additional 30,000 shares of Printron common stock through his account at the broker/dealer at which he is employed as a registered representative; that this purchase evidences the fact that Claimant Barnes does not believe his claims were meritorious and was trying to gain control of Printron.

RELIEF REQUESTED

Claimant requested damages for lost profits in excess of 1.6 million plus 5 million dollars in punitive damages, Rico damages and attorney's fees.

Respondents requested that the Panel dismiss Claimant's claim in entirety, require Claimant to pay all forum fees and request reasonable attorney's fees in the amount of \$30,000.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondents Motion to Dismiss made at the close of Claimant's case was deferred until the close of the evidence.
2. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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. Respondents, Summit and Henricks, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$60,000.00, inclusive of interest.
2. Claimants requests for attorney's fees, costs, expenses, punitive and Rico damages are denied.
3. Respondents' requests for attorney's fees, costs and expenses are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$18,300.00 computed as follows: 1 pre-hearing conference x \$300.00 plus 12 sessions x \$1,500.00.
2. Respondents, Summit and Henricks, are hereby assessed \$18,300.00, jointly and severally, \$8,400.00 of which shall be paid directly to the Claimant, and \$9,900.00 of which shall be paid to the National Association of Securities Dealers, Inc., less credit for the \$8,400.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$1,500.00.
3. The NASD shall retain the non-refundable filing fee of \$300.00 paid by the Claimant.

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

15/
Garry W. O'Donnell, Esq.

George L. Davis

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Manny Levine

Date of Decision: 2/24/94