

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Geoffrey Morrow

92-04296

Name of Respondents

Jersey Capital Markets Group, Inc.
John T. Booth
Thomas Martin

REPRESENTATION

For Claimant, Geoffrey Morrow ("Morrow"): Sherrie B. Marcus, Esq. of Marcus & Associates, P.A., Miami, Florida.

For Respondent, Jersey Capital Markets Group, Inc. ("Jersey"), and John T. Booth ("Booth"): Thomas A. Rigilano, Esq. of Gusrae, Kaplan & Bruno, New York, New York.

Respondent Thomas Martin ("Martin") was not represented and did not appear at the hearing. (See Other Issues)

CASE INFORMATION

Statement of Claim filed: December 24, 1992.

Claimant's Submission Agreement signed: January 23, 1992.

Statement of Joint Answer filed by Respondents Jersey and Booth: August 10, 1993.

Respondents, Jersey and Booth failed to file a Submission Agreement as required by sections 12 and 25 of the Code.

Respondent Martin was not served with a copy of the Statement of Claim and therefore did not respond.

HEARING INFORMATION

On March 23, 24 and 25 in Fort Lauderdale, Florida. hearings lasting six (6) sessions were held.

CASE SUMMARY

Claimant alleged that Respondents conducted unauthorized trading in Claimant's account; used the mails or other instrumentalities of interstate commerce to defraud Claimant in connection with trades in Peerless Production Ltd., Inc. and Optimum Electronics, Inc.; in connection with said trades violated Sections 10(b), and 9(a) of the Securities Exchange Act of 1934, Rule 10(b)-5 thereunder, Section 5(b)(2), 12(1), and 12(2) of the Securities Act of 1933; engaged in market manipulation; breached the contract with Claimant and the fiduciary duty owed Claimant; and engaged in conduct constituting Common Law Fraud, Negligence and Conversion.

Respondents denied all allegations of wrongdoing contained in the Statement of claim and set forth the affirmative defenses of; failure to state a cause of action; failure to plead fraud with particularity; statute of limitation; comparative negligence; claimants damages are the result of market conditions; recovery of damages is barred by the provisions of 15 U.S.C. § 78cc; unclean hands; waiver; laches; ratification; and estoppel.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$214,000.00 plus interest and an unspecified amounts for punitive damages, attorneys fees and costs.

Respondents requested dismissal of all claims and an award of attorneys fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent Martin has not been served with the Statement of Claim nor been given any notice of this proceeding and neither Claimant nor Respondents have any knowledge as to his whereabouts. The Panel finds that Respondent Martin is not an indispensable party and therefore, all claims against him are dismissed without prejudice.

2. Respondents' Motion to Postpone the hearing due to a settlement between former Respondent OTRA Clearing and Claimant was denied.
3. Respondents moved to compel production of bank records and tax returns from Claimant. Claimant's attorney replied that most records were destroyed by Hurricane Andrew. Respondents' Motion to Compel was granted as to records that Claimant could get from other sources; specifically, year end bank records and tax returns from 1988 to 1990 with Claimant to produce records by March 24, 1994.
4. Respondents' Motion to Strike exhibit LL from Claim was granted without objection by Claimant.
5. 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. Respondents, Jersey and Booth, are found liable, jointly and severally, and shall pay to Claimant actual damages in the amount of \$181,545.75 (\$193,800.00 less \$12,254.25 proceeds from sale of warrants) plus interest at the rate of twelve percent (12%) from April 2, 1990 to date equaling \$87,141.96 for a total amount due the Claimant of \$268,687.71.
2. Claimant's request for attorney's fees and punitive damages is hereby denied.
3. Respondent Martin was dismissed without prejudice and this Panel has made no determination as to the claims against Respondent Martin.

OTHER COSTS

Other than Forum Fees discussed below, the parties shall each bear their own costs of this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,500.00 (6 sessions X \$750.00).

1. Claimant is hereby assessed \$2,250.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. in the amount of \$1,500.00.

2. Respondents are hereby assessed \$2,250.00 jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

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Seth L. Finkel, Esq., Chair

Public

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Manny Levine

Public

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Carl J. Hegner

Industry

Date of Decision: 4/29/94