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9505098

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Scott H. Sweigart

93-00243

Name of Respondents

J.W. Gant and Associates, Inc.
Brian Sorentino
Bradley Duppong
Frank Louis Palumbo
Sandra Lee Solomon
Mark Allen Lathrop
Salvatore Anthony Venezia
Craig Wilson

REPRESENTATION

For Claimant, Scott H. Sweigert ("Sweigert"): Patricia A. Shub, Esq. of Fort Lauderdale, Florida.

For Respondent, J.W. Gant & Associates, Inc. ("Gant"): Frank L. Palumbo of Boca Raton, Florida; for Respondents, Brian Sorentino ("Sorentino") and Bradley Duppong ("Duppong"): pro se; for Respondent, Craig Wilson ("Wilson"): J.B. Grossman, Esq. and Kenneth J. Dunn, Esq. of J.B. Grossman, P.A., Fort Lauderdale, Florida; for Respondents, Mark Lathrop ("Lathrop"), Salvatore Venezia ("Venezia"), and Sandra Lee Solomon ("Solomon"): Dean A. Aarestad, Esq. of Aurora, Colorado; and, for Frank L. Palumbo: Robert Carlin, Esq. of Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed: January 21, 1993. Claimant's Submission Agreement signed January 16, 1993.

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Respondents' Statements of Answer filed: April 6, 1993 by Wilson and Palumbo; May 13, 1993 (Joint Answer) by Solomon and Venezia; April 5, 1993 by Lathrop; April 22, 1993 by Sorentino, and May 7, 1993 by Duppong.

Respondents' Submission Agreements signed: April 5, 1993 by Wilson and Palumbo; May 13, 1993 by Solomon and Venezia; April 5, 1993 by Lathrop; April 22, 1993 by Sorentino; and May 7, 1993 by Duppong.

Respondent, Gant, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On February 23 and 24, 1994 and March 15, 1995, in Fort Lauderdale, Florida, hearings lasting 6 sessions were conducted.

CASE SUMMARY

Claimant submitted a case summary as follows: Claimant alleged that he invested in penny stocks with Gant, a penny stock firm; that Claimant was 26 at the time he did business with Gant and could not have understood that its sales pitches were pure misrepresentations or that the firm created an artificial market for the securities; that the brokers, Sorentino and Duppong were liable for fraud, breach of fiduciary duty, and violations of the Florida Securities Statutes; and, that the principals, control persons and national sales manager, Salvatore Venezia, Sandra Solomon, Mark Lathrop and Frank Palumbo, respectively, are liable under negligent supervision, respondeat superior and vicariously as control persons and principals.

Respondents Lathrop, Venezia and Solomon submitted a case summary as follows: Respondents denied all allegations of wrongdoing and alleged that Claimant, as part of his statement of claim, alleged improper supervision by Respondents, Mark Allen Lathrop, Sandra Lee Solomon and Salvatore Anthony Venezia. Respondents asserted defenses of failure to state a claim upon which relief can be granted; Claimant's failure to file in a timely manner thereby barring Claimant's claims by the Statute of Limitations; and that Claimant failed to mitigate his damages, if any.

Respondent Wilson was dismissed prior to the hearing (See Other Issues).

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The remaining Respondents did not file case summaries as directed by the panel (See Other Issues.)

RELIEF REQUESTED

Claimant requested damages in excess of \$28,000.00 plus interest pursuant to Section 517.211, Florida Statutes and punitive damages.

Respondents requested dismissal and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel found service upon and that due notice was given to Gant based upon the NASD file and record evidence. According to the NASD file, Respondent Palumbo was the representative of Gant. Pursuant to Section 29 of the Code, this Award is entered as if Gant entered an appearance in this matter.
2. Respondents Sorentino and Duppong appeared by counsel, J.B. Grossman, Esq. at the initial hearing of this matter. On October 1, 1994, Mr. Grossman's firm withdrew from further representation of Sorentino and Duppong and they did not appear at the final hearing on March 15, 1995. Pursuant to Section 29 of the Code, this Award is entered as if Sorentino and Duppong were in appearance at the final hearing.
3. On the morning of March 15, 1995, this Panel and the parties who were present were informed that Arbitrator Pabalis would not be appearing. After being offered a range of options, including the appointment of a new arbitrator and a short postponement to review his or her background, the parties elected to go forward with the remaining two arbitrators.
4. Between the first and second set of hearing dates, Arbitrator Weissman withdrew due to illness and was replaced with George Davis. The parties were informed and accepted Mr. Davis who listened to all of the tape recordings of the first two days of hearing.
5. Prior to the commencement of the third day of hearing on March 15, 1995, the NASD was notified of the withdrawal of the claims against Respondent Wilson. As a result, this Panel did not consider or decide any matter with respect to Wilson.

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6. The parties who were present 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 originals 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, Gant, Sorentino, Palumbo, Duppong, Lathrop, Venezia and Solomon, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$56,817.48, inclusive of interest.
2. Claimant's request for punitive damages is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,400.00 (6 sessions x \$400.00).
2. Claimant is hereby assessed \$500.00 for which the NASD shall retain the \$500.00 previously deposited in full satisfaction thereof.

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3. Respondents, Gant, Sorentino, Palumbo, Duppong, Lathrop, Venezia and Solomon are hereby assessed \$1,900.00, jointly and severally, for which the NASD shall retain the \$1,000.00 previously deposited by Respondents Venezia and Solomon in partial satisfaction thereof, leaving a balance due of \$900.00 which shall be paid to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

/s/
Allen Kilik, Esq.

Public

/s/
George Davis

Industry

Date of Decision: 5/25/95