

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jean A. Robinson

93-00449

Name of Respondents

Atlanta-One, Inc.
James Lukes
Craig Cunningham
Brian Moore

REPRESENTATION

For Claimant, Jean A. Robinson ("Robinson"): Allan Fedor, Esq. of Fedor and Fedor, Largo, Florida.

For Respondents, Atlanta One, Inc. ("Atlanta One"), James Lukes ("Lukes"), Craig Cunningham ("Cunningham") and Brian Moore ("Moore"): Robert Conn, Esq. of the law office of Robert L. Conn, Newport Beach, California.

CASE INFORMATION

Statement of Claim filed: February 3, 1993. Claimant's Submission Agreement signed on: February 3, 1993.

Statement of Answer filed by Respondents on: March 24, 1993. Respondents Submission Agreements signed on: March 23, 1993 by Lukes, Cunningham and Moore and on March 23, 1993 by Thom Blodgett on behalf of Atlanta One.

HEARING INFORMATION

On March 17 and 18, 1994 in Tampa, Florida hearings lasting four sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for engaging in "boiler room" tactics in order to induce her into investing in foreign currency option trading. Claimant alleged that Lukes repeatedly telephoned her until she agreed to invest with him and that, once the initial investment was made, Respondents persuaded her into investing more funds with them to either "protect" or recoup amounts previously invested. Claimant alleged that Respondents were liable for: violation of Chapter 517.301 of the Florida Statutes; violation of the rules of the NASD; common law misrepresentation; fraud and deceit; negligence; gross negligence; breach of fiduciary duty; and, violation of Chapter 772.104 and 772.11 of the Florida Statutes. Claimant alleged that Atlanta One is liable under the theory of respondeat superior.

Respondents denied all allegations of wrongdoing and alleged that: Claimant was a fully informed investor who knowingly and voluntarily made each of the investment decisions in her account; Claimant was suitable for the transactions and desired speculation; and, Claimant was advised of the risks involved. Respondents asserted the affirmative defenses of: failure to state a claim; all relevant material facts were disclosed; the options account agreement signed by Claimant contradicts the Statement of Claim; authorization; ratification; assumption of risk; failure to mitigate damages; estoppel; waiver; unclean hands; and, bad faith.

RELIEF REQUESTED

Claimant requested damages in excess of \$219,000.00 plus interest, costs, attorney's fees, treble damages pursuant to Chapter 772.11 of the Florida Statutes and punitive damages pursuant to Chapter 772.104 of the Florida Statutes.

Respondents requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Atlanta One, Lukes, Cunningham and Moore are found liable, jointly and severally, and shall pay to Claimant the amount of \$169,889.00 plus interest of 6% per annum from January 7, 1992 to March 18, 1994 in the amount of \$22,341.57 for a total due to Claimant of \$192,230.57.
2. Respondents, Atlanta One, Lukes, Cunningham and Moore are also found liable, jointly and severally, for punitive damages and shall pay to Claimant the further amount of \$509,667.00. This panel finds that Respondents engaged in willful, wanton and gross misconduct the nature of which evidenced an entire want of care which raises a presumption of conscious indifference to the rights of Claimant so as to be equivalent to an intentional violation of her rights such that an award of punitive damages is appropriate.
3. Respondents, Atlanta One, Lukes, Cunningham and Moore are also found liable, jointly and severally, for attorney's fees. This panel leaves the amount of such attorney's fees to be determined by a court of competent jurisdiction in accordance with Chapter 682.11 of the Florida Statutes and the case law interpreting such Chapter.
4. Claimant's request for other costs is denied.
5. Respondents' request for costs and attorney's fees is denied.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$4,000.00 (4 sessions x \$1,000.00 per session).

1. Claimant is hereby assessed \$2,000.00 for which the NASD shall retain the \$1,000.00 hearing session deposit previously deposited by Claimant in partial satisfaction of such forum fees, leaving a balance due the NASD of \$1,000.00.

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Award

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2. Respondents, Atlanta One, Lukes, Cunningham and Moore are hereby assessed \$2,000.00, jointly and severally, payable to the NASD.

3. The NASD shall retain the \$250.00 nonrefundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Thomas E. Greef

Public/Chairman

/s/
Roderic A. Johnson

Industry

/s/ *

Public

Hal S. Holtsinger

*I, Hal Holtsinger, dissent only as to paragraph number 2 of the AWARD and otherwise concur in the decision.

Date of Decision: 5/3/94