

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

The Estate of Margaret McClanaghan,
Thomas McClanaghan, Personal Representative

93-00521

Name of Respondent

Kenneth M. Osler

REPRESENTATION

For Claimant: The Estate of Margaret McClanaghan, Thomas McClanaghan, Personal Representative, ("McClanaghan") was represented by Walter Baumgardner, Esq., of Musilli & Baumgardner, P.C., located in St. Claire Shores, Michigan.

For Respondent: Kenneth Osler ("Osler") was represented by Miles D. Hart, Esq. and Steve J. Weiss, Esq. of Hertz, Schram & Saretsky, P.C., located in Bloomfield Hills, Michigan.

CASE INFORMATION

Statement of Claim filed: February 11, 1993.

Claimant's Submission Agreement signed on: July 13, 1993 by Thomas McClanaghan, Personal Representative of the Estate of Margaret McClanaghan.

Respondents Submission Agreement signed on: October 22, 1993.

Statement of Answer filed by Respondent on: October 8, 1993.

Respondents Request for Clarification filed: October 28, 1993.

Claimants Response filed on: December 9, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: October 11, 1995 for One (1) session;
October 12, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Claimants alleged that Respondent Osler began a pattern of trading activity which constituted churning and the purchase of unsuitable investments. The claim specifically alleged that:

1. Beginning in 1986 and continuing until at least August 1992, Osler began a pattern of improper trading activity, even though he knew McClanaghan was elderly and required only conservative, "blue chip" investments;
2. Osler executed a large number of purchases and sales which had no economic justification. In addition, Osler had McClanaghan speculate in low priced, speculative stock which was unsuitable given claimant's age and investment experience;
3. Furthermore, Osler sold McClanaghan a large number of Limited Partnerships which were worthless, illiquid and unsuitable, solely for the purpose of receiving large commissions. Osler falsely represented the value of the accounts over a long period of time, preventing claimant from learning her true losses, and;
4. Osler did not obtain a proper power of attorney which allowed him to take orders from an improper personal representative.

Based upon the above allegations, Claimant asserted claims for violation of the standards of conduct set by the NASD and NYSE rules; misrepresentation; "churning"; unsuitability; and violation of the federal RICO statute.

Respondent denied the material allegations of the Statement of Claim, asserting that all trades in the account were authorized and claimant was aware of each and every transaction. In addition, the trading activity was suitable for investors with claimant's objectives, financial background, and history. The Respondent further alleged that:

1. Margaret McClanaghan's assets and affairs were controlled by her nephew and niece pursuant to a power of attorney. The power of attorney gave the relatives complete control over Ms. McClanaghan's finances, investments and living arrangements;
2. Ms. McClanaghan's nephew and niece opened an account in McClanaghan's name upon the advice of a investment advisor. The nephew and niece advised Osler of their aunt's situation upon opening the account and advised that they were interested in conservation of principal, but also with growth; and
3. McClanaghan's assets were concentrated primarily in one investment and Osler

recommended that the account be diversified. His recommendations included U.S. Treasury bonds; a money market fund; stocks; income oriented limited partnerships; and the placement of approximately \$232,000.00 with a money manager. Each transaction was conducted with the full knowledge and approval of McClanaghan's nephew and niece, who signed the partnership subscription documents, approved all stock transactions, and were intimately involved in each decision.

RELIEF REQUESTED

Claimant requested entry of an award against Respondent for the return of all commissions generated; the return of all principal lost of approximately \$300,000.00; attorneys' fees necessitated by this claim; exemplary or punitive damages; treble damages pursuant to RICO; and waiver of all filing fees.

Respondent requested that the arbitrators dismiss the matter and award Osler all costs and attorneys' fees for the defense of the claim.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$1,000.00 per session = \$3,000.00.

The National Association of Securities dealers, Inc. shall retain the \$250.00 claim filing fee paid by Claimant. In addition, the Claimant, The Estate of Margaret McClanaghan, Thomas McClanaghan, Personal Representative, is liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees. Furthermore, Respondent Kenneth Osler is liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Carole M. Crosby, Esq.

December 8, 1995

Carole M. Crosby, Esq.

Public Arbitrator

Chairperson

/s/ A. Robert Bliven

December 8, 1995

A. Robert Bliven

Public Arbitrator

/s/ Frank G. Bank

December 8, 1995

Frank G. Bank

Industry Arbitrator

For NASD Use Only

Date of Decision: December 18, 1995