

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Foresters Equity Services, Inc.

No. 93-01272

Name of Respondent

Gene Lavine

REPRESENTATION OF PARTIES

For Claimant: John P. Cione, President, Foresters Equity Services, San Diego, California, appeared by speaker phone. Jim Stahl, a registered representative of Foresters Equity Services, Inc., appeared at the hearing.

Respondent Gene Lavine failed to appear at the hearing.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 1993.

Claimant's Submission Agreement signed: March 19, 1993.

Respondent, Gene Lavine has failed to file an Answer to the Statement of Claim, and has also failed to file a Submission Agreement.

HEARING INFORMATION

Hearing date: October 7, 1993. One (1) session.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimant, Foresters Equity Services, Inc. ("FES"), alleged that in 1987, Respondent, Gene Lavine ("Respondent") used customers' money invested with him for personal reasons, and had never purchased the funds that the customers had requested. FES further asserted that Respondent had admitted to giving those same customers false statements since 1987 to lead them into believing their money had been invested since 1987 in the Total Return Trust of Massachusetts Financial Services. FES further asserted that it had never been aware of the misappropriation, and reimbursed them by purchasing the Total Return Trust at a value the fund would have been had the Respondent in fact purchased the fund.

The Respondent has failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant requested: a) \$30,000.00 from the Respondent; b) interest at 6%; and c) costs of this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

On June 4, 1993, FES made a written request to make a Motion to Bar the Late Answer of Respondent. An attempt was made to obtain a response from Respondent. However, a response was not forthcoming, and the NASD did not receive the request back from the U.S. postal service. After waiting an additional period of time after the caller-for response, the request was sent to the undersigned arbitrators. On September 3, 1993, the panel's Order was served on the parties. The arbitrators gave Respondent 10 days from the date of the Order to file a Response to the Claim. If Respondent failed to respond within that time, he would be barred from making any Answer or defenses to the Statement of Claim. Respondent failed to respond to the direction of the panel. At the hearing on October 7, 1993, the panel determined that the Motion would be denied due to the fact that the panel had no assurance that Respondent had received this motion because it had not been sent by certified mail. The panel did note that Respondent had received all certified correspondence, and that all correspondence had been sent to the same address.

Upon review of the file and the representations made by the NASD, the panel has determined that Respondent has been properly served

with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent has not filed an Answer in response to the Statement of Claim, and has failed to file a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 8 of the Code and is required to submit to arbitration and therefore is bound by the determination of the panel on all issues submitted.

The parties present at the hearing have agreed that the Award in this matter may be executed by 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. Respondent, Gene Lavine is liable for, and shall pay to the Claimant, Foresters Equity Services, Inc. the sum of \$30,000.00 plus interest at 6% from October 7, 1993, until paid, as satisfaction for its claims herein.

OTHER COSTS

Each party shall pay their own costs associated with this arbitration.

FORUM FEES

Pursuant to Section 44(c) of the Code, the following forum fees are assessed:

1 hearing session x \$300.00 = \$300.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimant.

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

CONCURRING ARBITRATORS

Dated:

Name:

October 7, 1993

/s/Richard E. Oswalt
Richard E. Oswalt
Presiding Chair
Industry Arbitrator

October 7, 1993

/s/Patrick C. McAllister
Patrick C. McAllister
Industry Arbitrator

October 7, 1993

/s/Anton Randal Burch
Anton Randal Burch
Industry Arbitrator

Date of Service by the NASD: 10.10.93