

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Carroll Keith Willard,
Claimant,

v.

No. 93-01273

Norwest Brokerage Services a/k/a
Norwest Investment Services, Inc.,
Respondent.

REPRESENTATION OF PARTIES

For Claimant: Jon Jabenis, Esq., of Gallup, Schaefer, Riha, Dornan, Jabenis and Shapiro, Omaha, Nebraska.

For Respondent: Lawrence Hoffman, Esq., of Zelle and Larson, Minneapolis, Minnesota, and Sheri Gould, Esq., of Norwest Corp. - Law Division, Minneapolis, Minnesota.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 30, 1993.

Claimant's Submission Agreement was signed on March 15, 1993.

Respondent's Statement of Answer and Counterclaim was filed on or about May 20, 1993.

Respondent's Submission agreement was signed on May 6, 1993.

HEARING INFORMATION

Hearing date: May 12, 1994. Two (2) sessions.

Hearing Location: Omaha, Nebraska.

CASE SUMMARY

Claimant alleged that the Respondent was liable for the trading losses sustained by the Claimant. Claimant further alleged that the Respondent knew or should have known that the Claimant was not suitable to carry on the type of speculative trading that he was doing. Claimant also alleged that the Respondent was negligent in not supervising the trading account for which he was not suited, and that the Respondent committed: Fraud; conversion breach of contract; negligence; breach of fiduciary duty; and civil theft.

Respondent denied each and every allegation contained in the Statement of Claim. In addition, Respondent asserted the affirmative defenses of failure to state a claim upon which relief can be granted; and the doctrines of laches, waiver, estoppel, and ratification. Respondent also asserted a Counterclaim for a mandate of an award of attorney's fees, costs and expenses for Claimant's action which was asserted to have been frivolous, meritless and filed in bad faith.

RELIEF REQUESTED

Claimant requested an award against the Respondent of up to \$367,403.00 in actual losses, punitive damages, reasonable attorney's fees and costs incurred.

Respondent asked that the claim be dismissed and that it be awarded reasonable attorney's fees, costs and expenses incurred in this matter.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's, Carroll Keith Willard's claims against Norwest Brokerage Services (N.K.A. Norwest Brokerage Services, Inc.) are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

2 Regular hearing sessions @ \$750.00 per session = \$1,500.00

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable Claim filing fee

in the amount of \$250.00, and shall **retain** the Claim hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable Counterclaim filing fee in the amount of \$250.00, and shall **retain** the Counterclaim hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Respondent.

Pursuant to Sections 30(b) and 43(c) of the Code, the NASD shall **retain** the postponement fee in the amount of \$750.00 previously paid by the Respondent.

CONCURRING ARBITRATORS

Dated:

Name:

May 24, 1994

Norman Veitzer/s/
Norman Veitzer
Presiding Chair
Public Arbitrator

May 24, 1994

Russell Bowle/s/
Public Arbitrator

May 31, 1994

Mark Yarwood/s/
Industry Arbitrator

Date of Service by the NASD: 6-9-94