

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Randall S. Cotner

93-01313

Name of Respondents

J.W. Gant & Associates
Pam Smith Haraburda
Linda Speare

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 2, 1993, Claimant Randall S. Cotner, through his counsel, Russell L. Forkey, Esq., Deerfield Beach, FL, alleged that Respondents J.W. Gant & Associates, Linda Speare and Pam Smith-Haraburda misled him into purchasing unsuitable securities such as CareAmerica, Jack Carl 312 Futures, Action Staffing Inc., Magnetech Corp., among others, and that these investments did not meet his investment objectives. The Claimant further alleged that this was part of the Respondents' scheme to sell securities at artificially inflated prices while earning high profits for the firm, and since the stocks in question have no market outside the one created by Respondent J.W. Gant & Associates, it was able to perpetuate this fraudulent scheme. Claimant Randall S. Cotner contended that he has suffered damages due to the Respondents' wrongdoing, and therefore, they should be held liable.

Respondent, Pam Smith-Haraburda, who appeared Pro Se, maintained that the Claimant has failed to provide any evidence of any wrongdoing of any of the Respondents, and that all trades conducted for his account were done with his prior authorization and knowledge. Respondent Pam Smith-Haraburda contended that the Claimant's claim is unsubstantiated and should be dismissed.

Respondent Linda Speare, through her counsel Michael J. Trentalange, Esq., who has since withdrawn as counsel, maintained that the investments made by the Claimant met his objectives of "growth with risk", and that they were suitable, considering this objective. Respondent Linda

Speare further maintained that the remaining allegations made by the Claimant are devoid of merit, and should be dismissed. Respondent Linda Speare contended that the claims of the Claimant and his unsubstantiated assertions are false, and therefore, his claim should be denied.

Respondent J.W. Gant & Associates failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Randall S. Cotner requested \$9,708.99 in actual damages, plus interest, attorney's fees and costs.

Respondent Pam Smith-Haraburda requested that the claims of the Claimant be dismissed.

Respondent Linda Speare requested that the claims of the Claimant be dismissed.

Respondent J.W. Gant & Associates failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent J.W. Gant & Associates was served a copy of the Statement of Claim by regular mail and given an opportunity to respond, which it failed to do. Notice of it's overdue answer and notification of the arbitrator's identity were received as evidenced by return receipt cards for packages sent certified mail.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent J.W. Gant & Associates was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George S. Coit, Jr., Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 8, 1993, by the Respondent Pam Smith-Haraburda on June 8, 1993 and by the Respondent Linda Speare on April 27, 1993, Respondent J.W. Gant & Associates did not sign a submission agreement as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Randall S. Cotner against Respondents J.W. Gant & Associates, Linda Speare and Pam Smith-Haraburda are dismissed in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, GEORGE S. COIT, JR., ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


George S. Coit, Jr., Esq.

DATE OF DECISION: October 22, 1993