

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Raymond C. Desmarais

vs.

Case #
93-01324
Consolidated
w/#93-01325

Name of Respondents

Janney Montgomery Scott Inc.
Norman R. Ferry

Name of Claimants

Donald P. D'Agostino
Mary G. D'Agostino
Adele D'Agostino

vs.

Name of Respondents

Norman R. Ferry
Janney Montgomery Scott, Inc.

REPRESENTATION

For Claimant, Raymond C. Desmarais ("Claimant"), Edward W. Russey, III, Esq., from Investors Arbitration Services, Inc., located in Woodland Hills, California.

For Respondents, Janney Montgomery Scott, Inc. ("Janney Montgomery") and Norman R. Ferry ("Ferry") (collectively "Respondents"), Paul D. Ragosta, Esq., located in Providence, Rhode Island.

In the second action the Claimants, Donald P. D'Agostino, Mary G. D'Agostino and Adele D'Agostino, collectively ("D'Agostinos"), were represented by Edward

W. Russey, III, from Investors Arbitration Services, Inc., located in Woodland Hills, California.

For Respondents Janney Montgomery Scott, Inc. ("Janney Montgomery") and Norman R. Ferry ("Ferry") (collectively "Respondents"), Paul D. Ragosta, Esq., located in Providence, Rhode Island.

CASE INFORMATION

Statement of Claim for Desmarais was filed on April 2, 1993.
Submission Agreement for Desmarais was signed on March 22, 1993.

Statement of Claim for the D'Agostinos was filed on April 2, 1993.
Submission Agreement for the D'Agostinos was filed on February 2, 1993.

State of Answer for Desmarais was filed by Respondents on August 25, 1993.
Submission Agreement for Desmarais was signed on July 12, 1993.

Statement of Answer on the D'Agostino matter was filed by Respondents on July 28, 1993.
Submission Agreement on the D'Agostino matter was signed on July 12, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	July 14, 1994	-	2 sessions
	July 15, 1994	-	2 sessions
	September 12, 1994	-	2 sessions
	September 13, 1994	-	2 sessions

Hearing Location: NASD offices located in Boston, Massachusetts.

CASE SUMMARY

Prior to the selection of the panel a Motion to Consolidate pursuant to Section 25(d) of the *Code of Arbitration Procedure* was filed by two sets of Claimants with claims against the same Respondents. That motion was granted by the Director of Arbitration.

Claimant Desmarais sets forth allegations of fraud and misrepresentation, breach of fiduciary duty, negligence and breach of contract. Claimant Desmarais alleges that Respondents were negligent in recommending and executing transactions

which were unauthorized and unsuitable for the Claimant. Claimant also alleges that the Respondents provided misleading and deceptive information upon which Claimant relied; that the Respondents conducted securities trading for Claimant's accounts contrary to Claimant's expressed objective to invest in securities that would provide long term growth with very low risks. Claimant, in addition, alleges that he was an unsophisticated investor and at all times relied on Respondents as the investment experts. Claimant asserts that as a result of the Respondents' wrongful conduct, which was in violation of the rules and regulations of the NASD, the NYSE and RICO, he sustained losses in the amount of \$78,007.37, exclusive of interests.

The Statement of Claim as to the D'Agostinos raises allegations of fraud and misrepresentation, negligence and breach of fiduciary duty. The claim also alleges violation of the rules and regulations of the NASD, NYSE and RICO. Claimants further allege that Respondents breached the implied covenant of good faith and fair dealing. Claimants maintain that the Respondents recommended and executed transactions which were unauthorized and unsuitable for Claimants through a course of wrongful conduct including churning. Claimants also maintain that Respondents conducted securities trading on Claimants behalf, such trading being contrary to Claimants' objective to invest in funds in securities that would provide long term growth with very low risk. Claimants asserts they are unsophisticated in securities investment matters and that they relied on the Respondents to make better investments decisions than they themselves could. Claimants also asserts, as a result of the Respondents' wrongful conduct, they sustained losses in the amount of \$236,476.68, not including interest.

Respondents denied all the allegations of wrongdoing set forth by Desmarais as well as the D'Agostinos.

As to the Desmarais claim, Respondents alleges that the Claimant was a knowledgeable, experienced and intelligent investor who had full knowledge of and assumed the risks incident to investing in the securities market and that any losses this Claimant might have sustained were caused by such risks.

Respondents also allege that Claimant had full knowledge of the material facts relative to his accounts with Janney Montgomery; that Claimant authorized or ratified all transactions in his accounts and that Ferry was used only as a "facility to execute orders". Respondents noted that Claimant directed and controlled trades in his accounts in a reckless manner and pointed out trades such as BF Goodrich in April, 1988 and Upjohn in August, 1988.

Respondents asserts that at all times, they acted in good faith with respect to Claimant. In addition, Respondents asserts that Claimant failed to timely complain, and as such, is barred by principles of estoppel, laches and waiver. Finally, Respondents maintain that Claimant failed to state a course of action upon which damages may be awarded.

Respondents raise essentially the same defenses in the D'Agostino matter as they did in Desmarais. Basically, the Respondents allege that Claimants were experienced and knowledgeable investors who assumed the risks incident to investing in the securities market and that any losses sustained were caused by or arose from such risks. Respondents also allege that at all times Claimants had full knowledge of all material facts relative to their Janney Montgomery accounts, including the positions maintained and the transactions made. Respondents further allege that Claimants are barred from any recovery because they authorized and/or ratified all transactions with full knowledge of material facts. Respondents, in addition, allege that Claimants are barred from recovery by estoppel, laches and waiver; that Claimants' losses were not proximately caused by the alleged misconduct of the Respondents; and that at all times Respondents acted in good faith and did not knowingly or intentionally violate any of the laws alleged. Finally, the Respondents allege Claimants failed to state the allegations of fraud with particularity and failed to state a cause of action upon which damages may be awarded.

RELIEF REQUESTED

Claimant Desmarais requests damages in the amount of \$78,007.37 for out-of-pocket losses, pre-award and post-award interest at the highest legal rate; punitive damages, RICO damages and costs and expenses including consulting fees, expert witness fees, attorney's fees and other costs deemed reasonable and just.

Claimants D'Agostino requests damages in the amount of \$236,476.68 for out-of-pocket losses; pre- and post-award interest at the rate of 12%; punitive damages, RICO damages, costs of arbitration including reasonable consulting fees expert witness fees, attorney's fees and other costs deemed reasonable and just.

As to both claims, Respondents request that the claims be dismissed in their entirety and that costs and attorney's fees be assessed against all Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copied and agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions by Claimants and Respondents, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Churning claims of both Desmarais and the D'Agostinos are denied.
2. The Fraud claims of both Desmarais and the D'Agostinos are denied.
3. The RICO claims of both Desmarais and the D'Agostinos are denied.
4. The Suitability claim of the D'Agostinos is denied. The Suitability claim of Desmarais is allowed.
5. The Intentional Misrepresentation claims of both Desmarais and the D'Agostinos are denied.
6. The Failure to Know Your Customer claims are allowed for both Desmarais and the D'Agostinos.
7. The Breach of Fiduciary Duty claims of both Desmarais and the D'Agostinos are denied.
8. The Breach of Covenant of Good Faith and Fair Dealing claims are denied as to the D'Agostinos and allowed as to Desmarais.
9. No damages are awarded to the D'Agostinos.
10. Respondents, Janney Montgomery Scott, Inc. and Norman R. Ferry, are jointly and severally liable and shall pay Raymond C. Desmarais **TWENTY FOUR THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$24,500.00).**

11. The claims of Desmaris and the Dagostinos for interest, and attorney's fees are denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed as follows:

Non-refundable Filing Fee: \$250.00

Hearing Session Fees: \$8,000.00 (8 hearing sessions x \$1,000.00 = \$8,000.00)

Total Fees = \$8,250.00

1. Claimants are assessed a \$250.00 non-refundable filing fee. Claimants are further assessed \$4,000.00 in forum fees. Claimants previously paid \$650.00 and owe a balance of \$3,350.00.
2. Janney Montgomery is assessed \$2,000.00 in forum fees.
3. Ferry is assessed \$2,000.00 in forum fees.

Fees shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Philip M. Giordano, Esq.	-	Public Chairperson
Mary C. Kelleher	-	Public Panelist
Lowell A. Warren, Jr.	-	Industry Panelist

Concurring Arbitrator's Signature

Mary C. Kelleher
Mary C. Kelleher

Date of Decision: December 1, 1994

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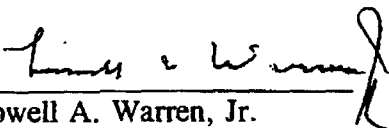
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