

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael A. Young

93-01990

Name of Respondents

Van Clemens & Co.
Kennedy, Mathews, Landis, Healy & Pecora
Donald Leslie Johnson

REPRESENTATION

For Claimant at the hearing: Gregory L. Wilmes, Esq. and Mark J. Briol, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

For Respondent Van Clemens & Co. at the hearing: John R. Dorgan, Esq. of Frommelt & Eide, Ltd, Minneapolis, Minnesota. For Respondent Kennedy, Mathews, Landis, Healy & Pecora at the hearing: Daniel W. Voss, Esq. of Larkin, Hoffman, Daly & Lindgren, Ltd, Bloomington, Minneapolis. For Respondent Donald Leslie Johnson at the hearing: Keith J. Broady, Esq. of Abdo and Abdo, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: May 18, 1993. Claimant's Submission Agreement signed on: May 3, 1993.

Statement of Answer filed by Respondent, Van Clemens & Co. on: August 6, 1993. Statement of Answer filed by Respondent, Kennedy, Mathews, Landis, Healy & Pecora on: July 23, 1993. Statement of Answer filed by Respondent Donald Leslie Johnson on: August 6, 1993.

Respondent, Van Clemens & Co.'s Submission Agreement signed on: August 4, 1993. Respondent, Kennedy, Mathews, Landis, Healy & Pecora's Submission Agreement signed on: July 23, 1993. Respondent Donald Leslie Johnson's Submission Agreement signed on: August 6, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: January 18, 1994 for two (2) sessions;
January 19, 1994 for two (2) sessions;
January 20, 1994 for two (2) sessions;
January 21, 1994 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Michael Young ("Young") alleged that respondents, Van Clemens & Co., Inc. ("Van Clemens") and Kennedy, Mathews, Landis, Healy & Pecora ("Kennedy") failed to supervise respondent Donald Johnson ("Johnson") while Johnson was their employee when he sold 7,450 shares of stock in Bioplasty, Inc. and 15,000 shares of Bio-Manufacturing, Inc. to Young in which Johnson engaged in numerous false representations of material fact regarding the stock. Young alleged that he was induced to purchase the stock, now worthless, after Johnson made numerous false representations about the companies which eventually filed for bankruptcy.

Respondent, Van Clemens alleged that Young was a sophisticated investor and that if any representations were made, they were not made by Johnson but were statements coming from Bioplasty or Bio-Manufacturing, and Johnson was merely passing them on to Young. Van Clemens also alleged that they properly supervised Johnson while he was employed with them.

Respondent Kennedy Mathews alleged that Young was fully apprised of the risks related to the investments at issue and that his stated investment objectives were speculative in nature and that the investments were suitable for Young's status and objectives.

Respondent Johnson denied that he made any false representations to Young regarding Bioplasty or Bio-Manufacturing to induce Young to purchase, sell or hold stock in these companies. Johnson alleged that if any announcements or statements which were made by Bioplasty were false, Johnson did not know they were false and repeated them to Young in good faith believing they were true and without any intent by Johnson to deceive or mislead Young.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the approximate amount of \$62,763.66; pre-award and post-award interest on all damages granted

until the date the award is paid; for a tripling of the compensatory award, or such other larger amount as the arbitrators deem just, to send a message to respondents, under the general Minnesota punitive damages law, the Minnesota double damage theft statutes, and the RICO law; for an award of attorneys' fees, as required by the Minnesota Securities laws, and RICO, in the approximate amount of \$74,030.41; the total award requested, exclusive of costs, is \$285,545.86, or such larger amount as the arbitrators shall deem just; for an award of all of claimant's costs, disbursements and expenses incurred; for such other relief as the arbitrators shall deem just and equitable.

Respondent Van Clemens requested that the Statement of Claim be dismissed. Respondent Kennedy Mathews requested that the Statement of Claim be dismissed. Respondent Donald Johnson requested that the Statement of Claim be dismissed.

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. Respondents, Van Clemens & Co., Inc., Kennedy, Mathews, Landis, Healy & Pecora, Inc., and Donald L. Johnson, shall be and hereby are jointly and severally liable for, and shall pay to the claimant, Michael Young, damages in the amount of Seventy Thousand Dollars and No Cents (\$70,000.00);
2. Respondent, Kennedy, Mathews, Landis, Healy & Pecora, Inc., only, shall be and hereby is liable for and shall pay to the claimant, Michael Young, punitive damages in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). The authority for the panel to award punitive damages is: Lee v. Chica, 983 F.2d 883 (8th Cir. 1993);
3. The claimant's request for RICO damages is denied;
4. The claimant's request for interest is denied;

5. The claimant's request for attorney's fees is denied;

6. Each of the parties shall bear their own costs and expenses other than those specifically enumerated for under Forum Fees below.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

8 sessions X \$750 = \$6000 minus hearing session deposit of \$750 = net \$5250 due.

The NASD shall retain the nonrefundable filing fee in the amount of \$200 and the hearing session deposit in the amount of \$750 which were previously deposited by the claimant with the NASD.

The additional forum fees are assessed against respondents Van Clemens & Co., Inc. and Kennedy, Mathews, Landis, Healy & Pecora, Inc., jointly and severally, in the amount of \$5,250.00.

The additional fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

February 14, 1994

/s/ Jack D. Elmquist, Esq.

Jack D. Elmquist, Esq.
Presiding, Public Arbitrator

February 14, 1994

/s/ Angela R. Banga, Esq.

Angela R. Banga, Esq.
Public Arbitrator

February 14, 1994

/s/ William R. Retterath

William R. Retterath
Industry Arbitrator

Date Award Served By The NASD: February 14, 1994,