

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Stanley L. Dembecki,
Claimant,

v.

No. 93-02742

USA Capital Management, Inc.,
Enrico P. Rusticali,
Minton Schmid Securities,
Austin Stone Securities, Inc.
f/k/a R. Writer Securities, Inc.
Respondents

REPRESENTATION OF PARTIES

For Claimant: Steven Grossman, Esq., of Investors Arbitration Services, Inc., Woodland Hills, California.

For Respondent USA Capital Management, Inc. ("USA"): H. Thomas Fehn, Esq., of Fields, Fehn & Sherwin, Los Angeles, California.

Respondents Enrico Rusticali, Minton, Schmid Securities, and R. Writer Securities, Inc., n/k/a Austin Stone Securities, Inc. ("Respondents") failed to appear at the hearing in this matter.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about July 12, 1993.

Claimant's Submission Agreement was signed on June 16, 1993.

Respondent USA's Statement of Answer was filed on or about October 6, 1993.

Respondent USA's Submission Agreement was signed on October 1, 1993.

Claimant's Amendment to Statement of Claim was filed on or about January 31, 1994.

Respondents failed to file an Answer to the Statement of Claim, and

have failed to file Submission Agreements with the NASD.

HEARING INFORMATION

Hearing date: May 19, 1994. One (1) session.

Hearing Location: Scottsdale, Arizona

CASE SUMMARY

Claimant, alleged that USA and Respondents: Violated Section 10-b and Rule 10(b)-5 of the Securities Exchange Act of 1934; placed Claimant in unsuitable investments; were negligent in their sale of low-priced, high risk penny stock securities to Claimant; breached their fiduciary duty to the Claimant; failed to supervise Respondent Rusticali; and breached the implied covenant of good faith and fair dealing with Claimant. The allegations arose out of the purchase of Acquisition Industries, Inc. ("Acquisition") common stock.

In its Answer, USA denied each and every allegation in the Statement of Claim. USA also asserted that all relevant causes of action are barred by applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested a joint and several award against all Respondents in the following amount:

1. Compensatory damages in the amount of \$20,505.00;
2. Costs of arbitration, including attorney's fees, representatives' fees, expert witness fees, filing fees, and such other costs as the arbitrators may deem fair and reasonable;
3. Pre- and post-award interest at the maximum rate allowed by law; and
4. Punitive damages in an amount to be determined by the arbitrators.

USA requested that the Statement of Claim be dismissed in its entirety and that it be awarded its costs and reasonable attorneys fees in defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

On or about April 4, 1994, USA requested that the Statement of Claim, pursuant to the arguments raised in its Answer, be dismissed. On or about April 20, 1994, Claimant responded to USA's request. After reviewing the pleadings and the aforementioned

documents, and deliberation, the undersigned arbitrators denied the request to dismiss the arbitration.

On or about May 9, 1994, Claimant filed a Motion to Bar USA from presenting any facts or defenses at the hearing of this matter. The motion was made pursuant to Section 25 (b) (2) (i) and (ii) of the NASD Code of Arbitration Procedure (the "Code"). On May 19, 1994, the arbitrators considered the motion and oral statements made by Claimant. After deliberation, the panel denied Claimant's motion.

On May 19, 1994, prior to the parties' opening statements, Claimant requested that the panel dismiss Respondents Enrico Rusticali, Austin Stone Securities, Inc. f/k/a R. Writer Securities, and Milton Schmid Securities without prejudice. USA did not object or concur in this request. After deliberation, the arbitrators granted the request, and dismissed the above-referenced Respondents from this case without prejudice.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Stanley L. Dembecki's claims are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

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

FORUM FEES

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

1 hearing session x \$400.00 = \$400.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall RETAIN the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

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

CONCURRING ARBITRATORS

Dated:

Name:

May 19, 1994

Kevin Olson/s/
Kevin Olson
Presiding Chair
Public Arbitrator

May 19, 1994

Dave Dove/s/
Dave Dove
Industry Arbitrator

May 19, 1994

Jerome W. Stranahan/s/
Jerome W. Stranahan
Public Arbitrator

Date of Service by the NASD:

5-24-94