

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gilbert Bornstein

Case Number 93-02746

Name of Respondent

Eugene Grin

REPRESENTATION

For Claimant Gilbert Bornstein (hereinafter referred to as "claimant") appeared Michael O'Leary, Esq., Fort Lee, New Jersey.

Respondent Eugene Grin (hereinafter referred to as "respondent") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on May 20, 1993. Claimant's Submission Agreement was signed on July 3, 1993.

Respondent's Grin did not file a Statement of Answer. Respondent Grin executed a Submission Agreement on November 2, 1995.

HEARING INFORMATION

The hearing was held on November 2, 1995 at the Marriott Financial Center located in New York City, New York and lasted one session.

CASE SUMMARY

Claimant, an emotionally, psychologically and mentally impaired individual, alleged that he is enrolled in the Barnert Psychiatric Rehabilitation Program in Paterson, New Jersey since 1985

having been diagnosed with a personality disorder and brain dysfunction. In June, 1986, claimant's assets allegedly totalled approximately \$45,000.00, approximately \$32,000.00 of which was invested in the Franklin Mutual Fund. The balance of the funds were allegedly held in safe and secure depositories.

On July 3, 1986, respondent was allegedly introduced to claimant and advised claimant that he would double his money and that, if he bought "cheap" or "penny stocks", claimant could not lose money if he held the securities for a long period of time. Respondent allegedly knew that claimant was unemployed and mentally and emotionally impaired and that claimant was not capable of understanding or appreciating the risks of said investments. Claimant alleged that the investments were unsuitable and contrary to the investment objective of not investing in risky securities, claimant also alleged that respondent engaged in unauthorized and excessive trading in his account. Over a course of months, respondent allegedly recommended transactions which resulted in losses of \$12,724.04. Claimant alleged that respondent, acting in concert with a third-party, undertook to manage his account, and thus is liable for the losses sustained by claimant, plus interest and costs.

Respondent Grin did not file a Statement of Answer. At the hearing, respondent Grin denied all allegations of wrongdoing as asserted by claimant.

RELIEF REQUESTED

Claimant requested an award in his favor for actual and compensatory damages, costs and an award of punitive damages.

Respondent requested that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator made the following rulings as to respondent Grin who executed a Submission Agreement at the hearing, but who failed to file a statement of answer in this matter:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the arbitrator found subject matter jurisdiction over this entire controversy and specifically as it related to respondent Grin.
2. The arbitrator found that Grin was a person associated with an NASD Member Firm, namely Denton & Co. at the time this controversy arose. Consequently, the panel found personal jurisdiction over Grin pursuant to Section 12 (a) of the Code. Additionally, Grin executed a Form U-4 requiring him to arbitrate at this forum upon demand of the customer claimant.
3. In view of (2) above, Grin was required to file with the NASD a statement of answer pursuant to Section 25 (b) of the Code. In this regard, the arbitrator found that the NASD properly served the claimant's claim upon Grin pursuant to Section 25 (a) of the Code.

AWARD

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

1. Respondent be and hereby is liable and shall pay to the claimant the sum of \$27,470.24, plus interest at 8% per annum from November 2, 1995 until the date of full payment.
2. All claims for punitive damages be and hereby are denied.
3. Each party shall bear their own costs, except that respondent be and hereby is liable and shall pay to claimant \$7,500.00 representing attorney's fees expended by claimant in pursuing this arbitration.
4. Respondent be and hereby is liable and shall reimburse claimant the sum of \$300.00 representing the hearing session deposit claimant deposited with the NASD upon filing this claim.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$100.00 filing fee and \$300.00 hearing session deposit. The arbitrator has also determined that the cost of the hearing session held on November 2, 1995 is to be assessed against respondent.

Arbitrator's Signature:

Stephen Goodman, Esq.

I, Stephen Goodman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules, that this is my decision in the above-captioned matter.

Stephen Goodman, Esq.

Date of Decision: May 23, 1996