

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rajeshree A. Patel

93-02778

Name of Respondents

Hamilton Investments, Inc.
and Anthony Quirini

Representation of Parties

Claimant, Rajeshree Patel (hereinafter, "Claimant") was represented at the hearing by Alan Block, Esq. of Block & Landsman, Chicago, Illinois.

Respondents, Hamilton Investments, Inc. and Anthony Quirini (hereinafter, "Respondents") were represented at the hearing by Stephen P. Bedell, Esq. of Gardner, Carton & Douglas, Chicago, Illinois.

Case Information

The Statement of Claim was filed on July 15, 1993. Claimant's Motion To Vacate all Technical Defaults and To Dismiss the Counterclaim was filed on January 19, 1995. Uniform Submission Agreement was signed on July 9, 1993 by Claimant.

The joint Statement of Answer was filed on December 2, 1993. Respondents' counterclaim was filed on December 6, 1994. Uniform Submission Agreement signed on November 19, 1993 by Respondent Hamilton Investments, Inc. Uniform Submission Agreement signed on December 17, 1993 by Respondent Anthony Quirini.

Hearing Information

Prehearing conferences were held on May 26, 1994 for two (2) sessions, June 23, 1994 for one (1) session, and on August 9, 1994 for one (1) session for a total of four (4) sessions.

The hearings were held on January 23, 1995 for two (2) sessions, January 24, 1995 for two (2) sessions, February 27, 1995 for two (2) sessions, February 28, 1995 for two (2) sessions, March 1, 1995 for one (1) session, and on March 7, 1995 for one (1) session, in Chicago, Illinois for a total of ten (10) hearing sessions.

Case Summary

Claimants alleged in their Statement of Claim that respondents engaged in the following concerning their account held with respondent, Hamilton Investments, Inc.: purchasing unsuitable securities, misrepresentation and failing to disclose, failing to advise of the risks of trading on margin and that they would be trading on margin, and misrepresenting the status of claimant's account. Claimants also alleged that while engaging in the above, respondents violated Section 10(b)(5) of the 1934 Securities and Exchange Act of 1934, Rule 10b-5 of the Securities and Exchange Commission, the Illinois Consumer Fraud and Deceptive Business Practices Act, NASD rules and NYSE rules, and common law theories of fraud and breach of fiduciary duty.

In their Answer, respondents stated that they deny the violations contained in the claim. Respondents set forth the following affirmative defenses: failure to state a claim for which relief may be granted; waiver, ratification and acquiescence; unclean hands; no private right of action; failure to mitigate; no contractual provision or legal theory giving rise to recovery of attorney's fees.

In their Counterclaim, respondents alleged that Mrs. Patel knowingly made false allegations against respondents and thus is guilty of malicious prosecution and abuse of process.

Claimant, in the response to the counterclaim, stated that they did not receive notice of the counterclaim, that the counterclaim should be dismissed as untimely, and that the counterclaim should be dismissed for failure to state a claim upon which relief can be granted.

Relief Requested

Claimant requested compensatory damages in the amount of \$133,792.40 with interest at the rate of five percent (5%) per annum from June 3, 1993 until the date an award is entered, punitive damages in the amount of \$200,000.00 and the costs of this proceeding. Claimant also requested that the counterclaim be dismissed.

Respondents requested an award dismissing the claim and granting respondent's counterclaim of at least \$140,000.00, plus attorney's fees and costs and such other relief as the panel deems just and proper.

Other Issues Considered and Decided

The parties present at the hearing 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 remains on file with the NASD.

Respondent filed a Motion To Dismiss Counts III and IV of the Statement of Claim. Claimants filed a response to the motion and respondents filed a reply. The panel dismissed counts III and IV. The panel also ruled that to the extent that breaches of NASD or NYSE rules may be relevant to establishing those counts, the allegations contained within Counts III and IV remain a part of the arbitration proceedings and the panel's consideration.

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, Hamilton Investments, Inc. and Anthony Quirini shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Rajeshree Patel, as follows:
 - a. compensatory damages in the amount of Fifty Nine Thousand, Three Hundred Ninety Three Dollars (\$59,393.00);
 - b. interest on the sum stated above in subparagraph a, at the rate of five percent (5%) to begin accruing from June 3, 1993 until the date the award is paid;
2. Claimant's request for punitive damages is denied;
3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated herein.

Counterclaim

4. Respondent's counterclaim is denied in its entirety.

Forum Fees

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

10 hearing sessions X \$1000 = \$10,000 minus \$1000 = \$9000 plus 4 prehearing conference sessions X \$300 = net \$10,200 due to the NASD.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250, and shall retain the hearing session deposit in the amount of \$1000 previously paid to the NASD by the Claimant.

The additional forum fees in the amount of \$10,200 are assessed jointly and severally, against Respondents, Hamilton Investment, Inc. and Anthony Quirini in the amount of \$5,100 and against Claimant in the amount of \$5,100. The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

5/19/95

s/s William Mock
William Mock, Esq.
Presiding, Public Arbitrator

4/21/95

s/s John Fennig
John Fennig, Esq.
Public Arbitrator

5/11/95

s/s Howard A. Buchler
Howard A. Buchler
Industry Arbitrator

Date Award Served By The NASD: 5/22/95