

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Offset, Inc. Profit Sharing Plan

93-03102

Name of Respondents

Calton & Associates, Inc.
Brian William Mohan
Southwest Securities, Inc.

REPRESENTATION

For Claimant, Offset, Inc. Profit Sharing Plan (Offset): Layne Verebay, Esq. of Freedman & Verebay, P.A., Miami, FL.

For Respondent, Calton & Associates, Inc. ("Calton") and Brian William Mohan ("Mohan"): Harry W. Haskin, Esq., Sarasota, FL.

For Respondent, Southwest Securities, Inc. ("Southwest"): Jerome S. Wade, Esq. of Southwest Securities, Dallas, TX.

CASE INFORMATION

Statement of Claim filed: August 6, 1993.

Claimant's Submission Agreement signed on: October 21, 1993.

A joint Statement of Answer filed by Respondents, Calton and Mohan on: January 3, 1994.

A Statement of Answer filed by Respondent, Southwest on: March 3, 1994

Respondent, Calton's Submission Agreement signed on: January 27, 1994 by Dwayne K. Calton on behalf of the firm.

Respondent, Mohan's Submission Agreement signed on: January 3, 1994.

Respondent, Southwest's Submission Agreement signed on: March 4, 1994 by Jerome Wade on behalf of the firm.

HEARING INFORMATION

On January 11, 1995 in Ft. Lauderdale, Florida a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant, Heberling, filed a five count claim against the brokerage firm, Calton and the broker, Mohan. Count I claims that the Respondents have violated Section 10(b) of the Securities Exchange Act. Count II claims that the Respondents violated Florida Statute 517.301. Count III claims that the Respondents committed common law fraud. Count IV claims that the Respondents breached their fiduciary duty owed to the customer. Finally, Count V claims that the Respondents are liable for negligence.

Claimant has alleged that the two purchases of U.S. Surgical Corp. were unsuitable and caused an undue concentration of health related stock in a portfolio that required diversification, especially in light of the fact that it was a profit sharing plan. The Claimant has further claimed that the broker had no market strategy as to when to sell U.S. Security if the price declined.

Respondents have denied the allegations contained in Counts II, III and V. Respondents moved to dismiss Count I based upon the basis that there was no fiduciary duty between the Claimant and Respondents. Respondents also filed several Affirmative Defenses in defense to Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages of \$14,496.64, prejudgment interest, attorney's fees and all costs.

Respondents requested dismissal of the Claim in its entirety and that Respondents' costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

- 1) 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 original(s) remain on file with the NASD.
- 2) Claimant dismissed Respondent Southwest with prejudice prior to the

arbitration hearing. Both parties agreed to pay own costs and Attorney's fees.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Calton and Mohan are found liable, jointly and severally, and shall pay to the Claimant the amount of \$14,496.64 in compensatory damages and \$3,752.47 in interest.
2. Claimant's request for costs is denied.
3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (2 sessions x 400.00).

1. Respondent Calton is hereby assessed all forum fees totaling \$400.00, of which the full amount is to be paid to the National Association of Securities Dealers, Inc.
2. Respondent Calton shall pay the Claimant \$400.00, such amount being the \$400.00 NASD hearing session deposit previously paid by them to the NASD.
3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Monica I. Salis, Esq.

/s/
Elaine Feldman, Esq.

/s/
Irving V. Hanzman

Date of Decision

2-24-95