

10/95

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David M. Guskin

93-03250

Name of Respondents

Aaron Fischman
Jonah Rosenblatt
Benjamin Herskovich

REPRESENTATION

For Claimant David M. Guskin ("Claimant"): appeared pro se
For Respondent Aaron Fischman ("Fischman"): Fischman did not appear
For Respondent Jonah Rosenblatt ("Rosenblatt"): Rosenblatt did not appear
For Respondent Benjamin Herskovich ("Herskovich"): Herskovich did not appear

CASE INFORMATION

Statement of Claim filed: August 18, 1993
Amended Statement of Claim filed: December 27, 1993
Claimant's Submission Agreement signed on: August 5, 1993

Statement of Answer filed by Respondent Rosenblatt on: November 16, 1993
Rosenblatt's Submission Agreement signed on: November 11, 1993

Statement of Answer filed by Respondent Benjamin Herskovich:
November 17, 1993
Herskovich's Submission Agreement signed on: November 16, 1993

Statement of Answer filed by Respondent Aaron Fischman on February 15, 1995.
Fischman's Submission Agreement was executed on February 16, 1995

HEARING INFORMATION

Hearing Date/Session: October 17, 1995 - one hearing session

Hearing Location: NASD District Office, Washington, D.C.

CASE SUMMARY

Claimant alleged, among other things, that Respondent Fischman induced him to purchase 1000 shares of Great American Media Corp. ("GAMA") and 1000 shares of Visual Cybernetics Corp ("VSCY"). Claimant alleged that Respondents failed to ascertain his investment goals, his level of sophistication and risk tolerance. Claimant alleged that the investments recommended by Respondents were unsuitable. Claimant alleged that Respondents failed to disclose material information regarding these stocks, including that these stocks were thinly traded; that Advanced Equity Group, Inc. ("AEG") and Allied Capital ("Allied"), Respondents' employers, were principle on these trades; that the sale of these securities were out of the inventory of AEG and Allied; that the securities were being sold at an excessive mark up; that Fischman shared in the profits on these trades with AEG and Allied. Claimant alleged that Respondents violated 10b-5 of the Rules of the Securities Exchange Act, that Respondents violated the Rules of Fair Practice of the of the National Association of Securities Dealers, Inc. ("NASD"), that Respondents committed fraud; and that Respondents made intentional or negligent misrepresentations. Claimant alleged that when he purchased VSCY he specifically told Fischman that he wanted to sell the stock within 2 to 3 weeks from the date of purchase. Claimant alleged that when he attempted to sell this stock he was unable. Claimant alleged that when Fischman became aware that Claimant wished to sell securities, Fischman became unreachable.

Fischman filed a generally denial maintaining that he properly handled Claimant's account. Fischman maintained that Claimant never complained about the transactions at issue and is making a veiled attempt to recoup his losses. Fischman maintained several affirmative defenses, including but not limited to, Claimant's losses were due to market conditions beyond Fischman control.

Herskovich maintained that he had no direct dealings with Claimant and his involvement was limited to a strictly bookkeeping capacity. Herskovich therefore categorically denied all allegations of wrongdoing.

Rosenblatt maintained that he had no direct dealings with Claimant, he owed no more than a twenty percent interest in Allied, that he did not participate in the day to day activities of Allied, and that he had no supervisory, compliance or oversight responsibilities while at Allied.

RELIEF REQUESTED

Claimant requested, at the hearing, \$17,500 on his initial investment which represents the loss on the two stocks he purchased with the proceeds from VSCY netted out, \$13,675 in punitive damages, costs including filing and postponement fees, attorneys' fees and interest. Claimant stated that GAMA is worthless and has never been sold.

Respondents Herskovich and Rosenblatt requested that all claims against them be dismissed in their entirety and that they be awarded all costs and attorneys' fees associated with this matter.

Respondent Fischman requested that Claimant's claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

On October 16, 1995, Fischman's counsel notified the NASD in writing (See Exhibit A attached) that counsel was not able to reach his client and was unable to continue to represent Fischman. Respondent Fischman failed to appear; therefore, the Arbitrator pursuant to Section 12 of the NASD Code of Arbitration Procedure and the executed Submission Agreement of Fischman exercised his jurisdiction over Respondent Aaron Fischman and Fischman is bound by the rulings of the Presiding Arbitrator.

That at the hearing on October 18, 1995, Claimant informed the Presiding Arbitrator that he had reached a settlement in principle with Respondents Rosenblatt and Herskovich. That the settlements were not yet finalized but that he anticipated that they would be finalized shortly. Therefore, the rulings of the Presiding Arbitrator only address Claimant's claim against Respondent Fischman.

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. That Respondent Fischman is liable to Claimant and shall pay to Claimant the sum of \$17,500; plus interest at a rate of seven (7%) simple interest per annum from May 24, 1993 until the date the award is paid. That the Presiding Arbitrator determined that Respondent Fischman perpetuated a fraud against Claimant and that the award in favor of Claimant is

grounded on the intentional fraudulent behavior perpetrated on Claimant by Fischman.

2. That Claimant's claim for punitive damages is denied in its entirety.
3. That the parties shall bear their own costs, including attorney's fees, except as specifically addressed herein.
4. Any and all request for relief not specifically addressed herein is denied in its entirety.

OTHER COSTS

That the NASD shall retain the \$300 postponement fee previously deposited by Claimant.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the filing fees previously deposited by Claimant.

Arbitrator's Signature

Name

Public/Industry

Michael Fischetti
Michael Fischetti

Public

Date Award Served by the NASD: October 19, 1995