

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Dean Britting,

Claimant,

v.

No. 93-03586

Richard Gross,
Aaron Fishman, and
Michael Woloshin

Respondents

REPRESENTATION OF PARTIES

Dean Britting ("Claimant") appeared pro se.

Aaron Fishman and Michael Woloshin failed to appear at the hearing.

Richard Gross was dismissed prior to the hearing in this matter.

CASE INFORMATION

Claimant filed his Statement of Claim on or about September 13, 1993. Claimant's Submission Agreement was signed on September 9, 1993.

Respondent Michael Woloshin's Statement of Answer was filed on or about February 7, 1994.

Richard Gross' Statement of Answer was filed on or about December 8, 1993.

Respondent Aaron Fishman failed to file an Answer and failed to file a Submission Agreement.

Respondent Michael Woloshin failed to file a Submission Agreement.

HEARING INFORMATION

Pre-Hearing conference date: June 8, 1994. One (1) session.

Hearing date: June 22, 1994. One (1) session.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimant alleged that Michael Woloshin ("Woloshin") Claimant's broker at Whale Securities, and Aaron Fishman ("Fishman") a broker with Advanced Equity Group, Inc., knew each other, have exchanged information about the Claimant, and had conspired to exploit the Claimant to take advantage of what they perceived as an "easy mark". Further, Claimant alleged that Woloshin gave information about him to Fishman, and that based on that information, Fishman "cold called" Claimant from Fishman's office in New York. Claimant also alleged that Fishman and Woloshin (referred to hereafter jointly as "Respondents") had flagrantly and frequently violated their responsibilities as securities brokers in that they: Committed forgery; failed to provide proper disclosure regarding the degree of risk involved in the "bulletin board stocks" or "penny stocks" placed in his account; provided misleading information; committed unauthorized trades; (Respondents and the securities at issue below) were not properly registered in the State of Kansas; and failed to adhere to the Rules and Regulations of the NASD. The allegations arose out of a purchase of 25,000 shares of Big Boy Pacific, Inc. ("BPC") stock.

Woloshin denied the allegations contained in the Statement of Claim. Woloshin asserted that he was never registered at Advanced Equity Group, Inc., and that his only role had been strictly as a consultant.

Richard Gross ("Gross"), formerly a registered representative with Advanced Equities Group, Inc., denied having any contact with the Claimant until shortly before December 8, 1993. Gross asserted that all of the trades in Claimant's account were done by Fishman alone and done entirely without Gross' knowledge.

RELIEF REQUESTED

Claimant requested an award of \$65,640.00 against the Respondents.

Woloshin requested that the Statement of Claim be dismissed.

Gross requested that he be dismissed from the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

On or about March 15, 1994, Gross filed a Motion to Dismiss himself from the Statement of Claim. After considering the motion and Claimant's Response, and deliberation, the panel denied the motion. However, the arbitrators stated that, after the hearing was held in this matter, and they determined that the Claimant did not have a claim against Richard Gross, Claimant may be assessed the costs of the hearing, and Gross' costs associated with this arbitration.

Upon review of the file, the panel has determined that Respondents have been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code of Arbitration Procedure (the "Code"). The panel also determined that Respondents have received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent Woloshin did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, is bound by the determination of the panel on all issues submitted.

The party present at the hearing has 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 party present at the hearing has agreed to receive a conformed copy 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's claims made against Gross are, and each of them, denied and dismissed with prejudice.
2. Claimant's claims made against Woloshin are, and each of them, denied and dismissed with prejudice.
3. Respondent Aaron Fishman is liable for, and shall pay to the Claimant, Dean Britting, the sum of \$53,125.00.

OTHER COSTS

Each party shall bear their own costs associated with this arbitration, except as set forth more fully below.

FORUM FEES

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

1 pre-hearing conference session @ \$300.00 per session

1 hearing session @ \$500.00 per session

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall REFUND the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$800.00 are assessed against Respondent Aaron Fishman.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 22, 1994

Robert E. Fitzgerald, Jr./s/
Robert E. Fitzgerald, Jr.
Presiding Chair
Public Arbitrator

June 22, 1994

Arthur F. Dewsberry/s/
Arthur F. Dewsberry
Public Arbitrator

June 22, 1994

Walter E. Knowles/s/
Walter E. Knowles
Industry Arbitrator

Date of Service by the NASD: 6-24-94