

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Daniel W. Hiler

93-03799

Name of Respondent

Charles F. Harris, Jr.

REPRESENTATION OF PARTIES

Claimant Daniel W. Hiler ("Hiler") was represented at the hearing Pro Se.

Respondent Charles F. Harris, Jr. ("Harris") was represented at the hearing Pro Se.

CASE INFORMATION

Statement of Claim was filed by Claimant Hiler on September 21, 1993. The Submission Agreement was signed by Hiler on September 14, 1993.

Statement of Answer was filed by Respondent Harris on November 19, 1993. The Submission Agreement was signed by Harris on November 12, 1993.

HEARING INFORMATION

The hearing was held on April 25, 1994 for one session and on September 29, 1994 in Chicago, Illinois for a total of two (2) hearing sessions.

CASE SUMMARY

Claimant Hiler alleged in his Statement of Claim that Respondent Harris, his broker, misrepresented the business of Greenwich Pharmaceuticals ("Greenwich") in recommending the purchase of its common stock. Hiler further alleged that Harris misrepresented the reason for a delay in government approval of a drug under development by Greenwich, and that such misrepresentation prevented Hiler from making an informed decision respecting the sale of his shares.

Respondent Harris in his Answer acknowledged that he incorrectly represented to Hiler that Greenwich was in the mail order drug distribution business when it was not, but states that his misrepresentation was an innocent mistake based on misleading

information from a third party information vendor. Harris further claims that the misinformation which he had given Hiler was subsequently corrected before Hiler suffered any substantial loss from his position, and that Hiler determined to maintain his position after receiving the information that Greenwich was not in the mail order drug distribution business. Further, Harris states that Hiler bargained for and received from Harris preferentially low commission rates on subsequent stock trades in settlement of any claim which Hiler might have had against him as a result of Harris' innocent misrepresentation.

RELIEF REQUESTED

Claimant Hiler requested damages in the amount of \$4,563 representing out-of-pocket losses from the purchase and sale of 600 shares of Greenwich Pharmaceuticals, and punitive damages in the amount of \$400.

Respondent Harris did not specifically state a relief.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant Hiler has acknowledged entering into a settlement agreement with Respondent Harris regarding this matter, the scope of which is unclear. Harris' claim that Hiler knowingly waived his rights to make any claim in arbitration is rejected. Also rejected is Hiler's claim that Harris materially misled him in May 1992 respecting the status of a Greenwich drug approval application.

A hearing in this matter was scheduled for Monday, April 25, 1994 for which Claimant was mailed notice, but failed to appear. Respondent Harris appeared for this hearing. On June 14, 1994, the Arbitrator issued an order dismissing Claimant's claim with prejudice, subject to Claimant petitioning for reinstatement within fourteen days of the order, addressing the basis for any confusion Claimant may have had regarding the date of the hearing and why Claimant should not be assessed a charge to compensate Respondent for the expense and trouble of his unnecessary trip to Chicago on April 25. Claimant filed a petition for reinstatement on May 6, 1994, and the hearing was rescheduled. At the hearing held on September 29, 1994, the parties agreed that Claimant Hiler should compensate Respondent Harris \$100 for travel expenses.

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 Harris shall be and hereby is liable to

Claimant, Daniel W. Hiler, for Hiler's out-of-pocket losses in the amount of One Thousand, One Hundred Fifty Dollars and No Cents. (\$1,150.00) Respondent Harris shall pay to Hiler \$1,050, thus giving Harris credit for the \$100 which Hiler is obliged to pay for his failure to appear on April 25, 1994 at a duly noticed hearing;

2. Claimant's request for punitive damages is denied;
3. Any relief not specifically provided for herein is denied.

This award is based on a finding that in January 1992 Harris' negligently misrepresented to Hiler the business of Greenwich. While Hiler determined to hold the position on learning the true nature of Greenwich's business in May 1992, it is probable that he would not have purchased Greenwich if he had been properly informed in the first instance. Had Hiler been properly informed in the first instance, he would not have been confronted with the difficult decision whether to hold or sell a company whose shares were subject to sharp fluctuation based on the fate of its development efforts. Harris should therefore be held partially responsible for the loss suffered by Hiler even though he later provided Hiler correct information.

FORUM FEES

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

2 hearing sessions x \$100 = \$200.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$50, and the hearing session deposit in the amount of \$100. The panel orders that Claimant pay to the NASD the sum of Fifty Dollars (\$50.00) for the additional hearing session fess, and Respondent shall pay to the NASD the sum of Fifty Dollars (\$50.00) for the additional hearing session fees.

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

By The Arbitration Panel:

Dated:

November 2, 1994

/s/ Arne R. Rode
Arne R. Rode, Esq., Presiding
Public Arbitrator

Date Award Served By The NASD: November 10, 1994