

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Jerry F. Sullivan

and

93-04535

Name of Respondents

Neidiger, Tucker, Bruner, Inc. and
Gary A. Silvestri

REPRESENTATION OF PARTIES

Jerry F. Sullivan ("Claimant") appeared *pro se*.

Neidiger, Tucker, Bruner, Inc. and Gary A. Silvestri ("Respondents") were represented by Frank W. Visciano, Esq., Senn Lewis Visciano & Strahle, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about October 28, 1993. Claimant's Response in Opposition to Respondents' Motion for a Partial and/or Complete Dismissal was filed on August 25, 1994. Submission Agreement of Claimant Gerald F. Sullivan a.k.a. Jerry F. Sullivan was signed on October 26, 1993.

Statement of Answer was filed by Respondents Neidiger, Tucker, Bruner, Inc. and Gary A. Silvestri on or about February 22, 1994. Respondents' Motion for Partial Dismissal was filed on or about August 23, 1994. Submission Agreement of Respondent Neidiger, Tucker, Bruner, Inc. was signed on February 16, 1994 by Charles Bruner. Submission Agreement of Respondent Gary A. Silvestri was signed on February 23, 1994.

HEARING INFORMATION

A pre-hearing conference was held on Monday, August 22, 1994 for one (1) session with Holly Stein Sollod, Esq., presiding.

The hearing was held on Thursday, August 25, 1994 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondents violated the NASD Rules of Fair Practice, Rule 10b-5 of the Securities Exchange Act of 1934 and violated the Colorado Securities Act. Claimant specifically alleged that Respondent Silvestri had made the following representations to induce him to purchase shares of Video Professor Industries, Inc.:

- * guaranteed a minimum profit of 25%;
- * guaranteed that it was impossible to lose any money on the deal;
- * that time was of the essence due to mergers and other big things happening;
- * that the price of the stock would double rapidly;
- * that he would be limited to a 5% loss through his trader and automated systems at Neidiger. If the stock dropped 5% in value, it would automatically be sold by Neidiger for him;
- * Video Professor was a "pink sheet" stock and that he would have to rely on Silvestri exclusively for price information on the stock;
- * Neidiger had \$250,000 of client money in the stock;
- * that Silvestri had purchased 25,000 shares of the stock and was going to put all of his available cash into it;
- * that Silvestri was recommending Video Professor to all of his friends and had several hundred thousand dollars of client's money in the stock; and
- * that Silvestri owned thousands of shares of "144 stock" which he was going to hold for two years.

It was also alleged that this investment was not suitable for the Claimant in light of his stated investment objectives and net worth.

The allegations of wrongdoing set forth in the Statement of Claim were denied by the Respondents. Respondents stated that prior to the Claimant's purchase of the Video Professor stock, the Claimant had advised Respondent Silvestri that he wanted to invest \$20,000 which he had obtained as a result of a lawsuit pertaining to his prior investment in certain Rule 144 stock. It was also stated:

- * that prior to the investment in Video Professor, the Claimant had been provided information regarding a number of publicly traded stock in addition to Video Professor;
- * that it was the Claimant who selected Video Professor as a company in which he wished to invest;
- * that Respondent Silvestri had asked the Claimant whether he could afford to lose the amount of the investment;
- * that the Claimant was advised of the risk involved in an investment in Video Professor; and
- * that Respondent Silvestri had recommended that the Claimant not invest all of the \$20,000 in one stock.

RELIEF REQUESTED

Claimant requested that the sales at issue be rescinded; or, in the alternative, that he be awarded actual damages in the amount of \$20,030. Additionally, the Claimant requested that he be awarded interest on the principal at the statutory rate of 8% compounded annually from the date of sale to the date of award and any costs accrued. In addition, the Claimant requested the application of other causes and remedies which the NASD may deem applicable, including treble damages and, or punitive damages in any amount which NASD arbitration may deem appropriate.

Respondents respectfully requested that the claims be denied, and that Respondents be awarded their attorneys' fees and costs incurred in connection with this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

After hearing argument on the Motion for Partial Dismissal on behalf of the parties, the panel took the Motion under advisement. After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators denied the motion.

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.

AWARD

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

1. Respondents Neidiger, Tucker, Bruner, Inc. and Gary A. Silvestri shall be and hereby are jointly and severally liable for and shall pay to the Claimant Jerry F. Sullivan the sum of Ten thousand ten dollars (\$10,010).
2. No interest is awarded on the above stated sum.
3. No punitive or treble damages are awarded herein.
4. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
5. All relief requested not granted herein shall be and hereby is denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) hearing sessions x \$750 = \$1,500 and one (1) pre-hearing session x \$300 = \$1,800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200. Claimant shall be and hereby is liable for and shall pay to the NASD the sum of \$900 and Respondents Neidiger, Tucker, Bruner, Inc. and Gary A. Silvestri shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$900 as forum fees.

The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by Respondent Neidiger, Tucker, Bruner, Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Holly Stein Sollod, Esq.
Holly Stein Sollod, Esq.
Public Arbitrator, Presiding Chair

September 13, 1994

/s/ J.K. Glenn, Esq.
J. K. Glenn, Esq.
Public Arbitrator

August 26, 1994

/s/ Joseph M. Costello
Joseph M. Costello
Industry Arbitrator

September 2, 1994

Date served 9/19/94