

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Eugene D. Miller

93-04555

Name of Respondents

Branch, Cabell & Company  
Roger D. von Seldeneck  
Daniel E. Grandstaff

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REPRESENTATION

Claimant Eugene D. Miller ("Miller") was represented at the hearing Pro Se.

Respondents Branch, Cabell & Company ("Branch Cabell"), Roger D. vonSeldeneck ("vonSeldeneck"), and Daniel E. Grandstaff ("Grandstaff") were represented at the hearing by Stephen T. Gannon, Esq. of McSweeney, Burtch & Crump, P.C., of Richmond, Virginia.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant Miller on November 1, 1993. The Uniform Submission Agreement was signed by Miller on March 3, 1993.

A joint Statement of Answer was filed by Respondents Branch Cabell, vonSeldeneck, and Grandstaff on February 28, 1994. The Uniform Submission Agreement was signed by Anthony J. Frank, General Partner, on behalf of Respondent Branch Cabell on February 28, 1994.

A Uniform Submission Agreement was signed by Respondent vonSeldeneck on February 25, 1994.

A Uniform Submission Agreement was signed by Respondent Grandstaff on February 28, 1994.

### **HEARING INFORMATION**

The hearing was held on November 22, 1994, and November 23, 1994 at the Omni Richmond Hotel in Richmond, Virginia, for a total of five (5) hearing sessions.

### **CASE SUMMARY**

The Claimant, Eugene D. Miller, alleges that the Respondents breached their duties to him in that they: (1) failed to advise him that option contracts were not suitable investments for him, (2) failed to disclose that they did not provide Stock Loss/Stock Limit protection, and (3) gave him inadequate or incorrect investment advice with respect to his option account. The suitability issue was withdrawn by Claimant by his then counsel, Thomas H. Miller, Jr., Esquire, by motion, dated September 24, 1994. Claimant sought recovery of damages and costs for the alleged breaches.

Respondents contend that Claimant was experienced in option trading and that he, not the Respondents, made his investment decisions. Respondents further contend that Claimant was not damaged through any failure to have available a stock loss order. Respondents also contend that Claimant was given appropriate investment information. Finally, Respondents allege that this action was brought in bad faith and request attorney's fees and costs.

Although the material facts were disputed, the panel finds by the greater weight of the evidence that Claimant had substantial experience in option trading prior to the opening of his account with Respondents and that he made his own decisions with respect to the investments, rather than simply relying upon Respondents. The panel also finds by the greater weight of the evidence that Claimant was not damaged by any of the actions of the Respondents. Finally, notwithstanding that the panel finds Claimant's case to be unpersuasive, it is not so lacking in merit as to cause the panel to conclude that it was brought in bad faith.

Accordingly, the panel finds in favor of the Respondents on the merits of the case, declines to award either party the requested costs, except as provided elsewhere herein, and declines to award attorney's fees to the Respondents.

### **RELIEF REQUESTED**

Claimant requested in his Statement of Claim actual damages of \$40,767.29, with interest as provided by law, reasonable attorney's fees, and such other remedy deemed appropriate.

Respondents requested in their Answer that the Statement of Claim be dismissed in its entirety, and that they be awarded their internal costs and attorneys' fees in an amount to be proved at hearing.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original remains 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. The Statement of Claim filed by Claimant Eugene D. Miller, is denied and dismissed in its entirety.
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. Any relief not specifically provided for herein is denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed:

5 hearing sessions x \$400 = \$2,000.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120, and the hearing session deposit in the amount of \$400 previously paid to the NASD by Claimant.

The panel has ordered that the Claimant pay additional forum fees to the NASD

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in the amount of \$600 and Respondents, jointly and severally, pay \$1,000 to the NASD.

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

**By The Arbitration Panel:**

Dated:

12/28/94

Stuart H. Dunn  
Stuart H. Dunn, Esq., Presiding  
Public Arbitrator

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Arnald B. Crews, Esq.  
Public Arbitrator

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Alexander I. Heckman, Esq.  
Industry Arbitrator

Date Award Served By the NASD: 01-9-95

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**By The Arbitration Panel:**

Dated:

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Stuart H. Dunn, Esq., Presiding  
Public Arbitrator

12/22/94



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Arnald B. Crews, Esq.  
Public Arbitrator

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Alexander I. Heckman, Esq.  
Industry Arbitrator

Date Award Served By the NASD: 01-9-95

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*Alexander I. Heckman*  
Alexander I. Heckman, Esq.  
Industry Arbitrator

Date Award Served By the NASD 01-9-95