

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dennis Dawes

93-04899

Name of Respondent

Steven Petney

REPRESENTATION

For Claimant: Stanley T. Padgett, Esq. of the Law Offices of Padgett & Mierzwinski, P.A., Tampa, FL.

For Respondent: Michael Q. Carey, Esq., New York, NY.

CASE INFORMATION

Statement of Claim filed: November 29, 1993.

Claimant's Submission Agreement signed on: March 28, 1994.

Statement of Answer filed by Respondent on: May 26, 1994.

Respondent's Submission Agreement signed on: May 17, 1994.

HEARING INFORMATION

Six hearing sessions were conducted in this matter on April 22 and 23, 1997 and May 12, 1997 in Tampa, Florida.

CASE SUMMARY

Claimant alleged that Respondent Steven Petney violated the federal and Florida securities laws and Florida common law by omitting to state material facts and by recommending unsuitable securities to the Claimant.

Respondent maintained that the sale of small capital stocks which were speculative in nature

were at issue in the case, specifically, the following stocks were at issue: (1) Digital Products Corporation, (2) B.T. Telecom, Inc., (3) Keystone Camera Products, Inc., (4) Biopore, Inc., (5) VMS Mortgage Investment Fund, (6) ATNN, Inc., (7) Commercial Programming UN, (8) Non-Invasive Monitoring Systems, Inc., (9) Bally Gaming International, Inc. (10) Bally Manufacturing, Inc. and (11) Primedex Health Systems, Inc. Respondent maintained that Bally Gaming International sold at a significant profit.

Respondent next maintained there was no proof of any misstatement or omission which caused Claimant to purchase any stocks; no proof that Respondent knowingly misrepresented any fact or knowingly omitted any material fact; and, there was no proof that Claimant relied on any fraudulent statement or omission or that such reliance caused any damages.

Respondent next maintained the Claimant was fully informed by him of the risk associated with investing in small capital, growth stocks. Respondent denied that the securities recommended to Claimant were not suited to his stated investment objectives of long term growth and speculation. Respondent asserted that Mr. Dawes did not invest in his general account at F.N. Wolf and Co. Inc. expecting such investments were consistent with safety of principal.

Furthermore, Respondent maintained with each stock he recommended, he gave Claimant a balanced presentation of the risks and opportunities associated with investing in such speculative stock; Claimant understood the risk and invested in the stocks at issue freely and was fully aware of the potential for loss; and, Claimant never agreed to buy more than \$2,000.00 of a security recommended by Respondent until he made purchases with the proceeds of the sale of another security in his portfolio.

Respondent asserted that no evidence was submitted by Claimant in support of Count I, Fraud, to show that any material fact was misrepresented or omitted, that if any fact was misrepresented or omitted, it was done so intentionally by Respondent, or that Claimant relied to his detriment on any alleged misstatement or omission.

Respondent next maintained that the proof at the hearing established the following:

(a) that Claimant was intelligent, understood the risks associated with his investments and carefully and regularly reviewed his confirmations and monthly account statements;

(b) that Claimant was in full control of the trading in his account, carefully reviewed every document sent to him by Respondent regarding potential stock purchases;

(c) that Claimant was a sophisticated investor;

(d) that Claimant had a diversified portfolio of investments which included real estate, self owned businesses, self-directed mutual funds and annuities, and that the recommendations of speculative small capital growth stocks added to the diversification of such investments; and,

(f) that the securities purchased through Respondent and F.N. Wolf and Co. Inc. were suitable to Claimant's investment goals.

Next, Respondent maintained that the Claimant willingly continued to hold his investments, in some cases, for approximately two years, when they had substantial losses within the first year and there was no proof that Respondent Petney told him long term investments should be held for such a long period of time while losses in such securities consistently continued to mount.

In addition, Respondent maintained that based upon the facts established at the hearing, Respondent is not liable for fraud, alleged recommendations of unsuitable securities to Claimant, breach of a fiduciary duty, churning, ignorance or a breach of implied covenant of good faith and fair dealing. Respondent further maintained that the Claimant did not submit any memorandum of law or evidence, which was received by the panel, in support of his claim for attorneys' fees.

RELIEF REQUESTED

Claimant requested damages in the sum of \$26,637.07 plus pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment and costs of arbitration and expenses including reasonable consulting fees and attorneys' fees of \$3,000.00.

Respondent requested that the panel of arbitrators (1) dismiss the Statement of Claim, (2) award costs and attorneys' fees to him and, (3) award such other relief as they deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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.

At the hearing, the Claimant withdrew his claims of churning and broker ignorance. In addition, to the extent that any allegation related to the Claimant's IRA account at F.N. Wolf and Co., Inc., those allegations were also dismissed with the consent of the Claimant.

F.N. Wolf and Co., Inc. had previously been a party to this arbitration; however, F.N. Wolf & Co., Inc. filed for bankruptcy protection in July, 1994. Therefore, its liability was not a subject of this arbitration.

AWARD

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

The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$8,000.00 plus pre-judgment interest in the sum of \$1,000.00 for a total due to the Claimant in the sum of \$9,000.00.

The parties are referred to a court of competent jurisdiction for a determination of the entitlement to and the amount, if any, of attorneys' fees to be paid by the Respondent to the

The Respondent's requests for costs are denied.

Pursuant to Rule 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$2,400.00 (six sessions x \$400.00) are assessed as follows:

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

Date of Decision: June 16, 1996