

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Alba D. Leone and Gina Goehl

93-05136

Name of Respondent(s)

William Daniel Coogle
First Montauk Securities Corp.
Pacific Southern Securities, Inc.

REPRESENTATION

For Claimants: Bobby C. Aniekwu, Esq., of Bobby-Thompson C. Aniekwu & Associates.

Respondent William Coogle appeared pro se.

For Respondent First Montauk Securities Corp: Robert I. Rabinowitz, Esq.

Respondent Pacific Southern Securities, Inc. did not appear.

CASE INFORMATION

Statement of Claim filed: December 2, 1993.

Claimants' Submission Agreement signed on: December 2, 1993.

Statement of Answer filed by Respondent William Coogle ("Coogle") on: March 14, 1995.

Respondent William Coogle's Submission Agreement signed on: March 15, 1995.

Statement of Answer filed by Respondent First Montauk Securities Corp. ("Montauk") on: March 29, 1994.

Respondent First Montauk Securities Corp.'s Submission Agreement signed on: March 29, 1994.

Respondent Pacific Southern Securities, Inc. ("Pacific") did not file a Statement of Answer or execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure ("Code").

HEARING INFORMATION

Hearing Dates/Sessions: July 27, 1995 / two sessions
July 28, 1995 / two sessions
October 18, 1995 / two sessions
October 19, 1995 / two sessions
October 20, 1995 / two sessions

Hearing Location: Atlanta, Georgia

CASE SUMMARY

Claimant Leone, in her complaint, described herself as a forty-two year-old single resident of Atlanta, sporadically employed as a set decorator for television and film productions. Of the two money accounts involved in this dispute, one belonged to Leone individually and the other belonged to Leone and fellow Claimant Goehl jointly. Claimants alleged that Leone, by Goehl's consent, controlled both accounts and that all dealings between Claimants and Respondents were conducted through Leone alone. Claimants further alleged that, during the period in dispute, Leone had minimal investment experience. Claimants maintained that in May, 1986, they received a mailed solicitation from Blinder, Robinson & Co. (Blinder), which encouraged addressees to invest in penny stocks. Claimants further maintained that they mailed back the enclosed business reply portion, requesting more information about penny stocks, and afterward received a telephone call from Kenneth Martin (Martin), a Blinder representative. Claimants alleged that they informed Martin of their conservative investment objectives and lack of investment experience, and that Martin convinced them that he and Blinder would meet Claimants' objectives. Claimants further alleged that Leone thereupon opened an individual account at Blinder, with Martin responsible for directing and controlling trades on the account. Neither Blinder nor Martin were parties in this dispute. Claimants maintained that on or about October 27, 1986, Respondent William Coogle (Coogle) took over from Martin responsibility for controlling and directing trades on the Leone account, and that Coogle remained the Claimants' account executive through his tenures with Blinder, Respondent Pacific Southern Securities, Inc. (Pacific) and Respondent First Montauk Securities Corp. (Montauk). Claimants further maintained that when Coogle first called to introduce himself as the new account executive, his overbearing, jargon-filled presentation and his promises that he would easily meet Leone's conservative investment objectives served to both intimidate Leone and convince her to put her trust in Coogle. Claimants alleged that Coogle thereafter frequently executed trades on the Leone account without Leone's approval despite the fact that Leone had not granted discretionary authority to Coogle or to either of the other two Respondents. Claimants further alleged that throughout their association with Coogle, from 1986 to 1993, Coogle pressured Leone to rely on his judgment and continually reassured her that the mounting losses would be recovered. Claimants maintained that as a result of Leone's inexperience and trustfulness, Leone relinquished and lost control of both her individual account and the joint account Claimants would later open. Claimants further maintained that during the second half of 1992, Leone became fully aware of the losses suffered in the accounts, lost confidence in the Respondents, and that she closed both accounts in March, 1993. Claimants next alleged that Respondents' mark ups and mark downs were excessive and undisclosed to Claimants, that Respondents failed to disclose that they were market makers in many of the securities sold to the Claimants, that Coogle erroneously told Claimants that certain of their losses were tax deductible, and that investment strategies pursued by Respondents were unsuitable for Claimants.

Claimants further alleged that Respondents breached their fiduciary duties to customer Claimants and their contractual duties to handle Claimants' accounts in a good faith and a prudent manner, and that Respondents violated NASD and NYSE standards of conduct for member firms. Claimants further alleged that Respondents violated federal and Georgia state securities laws by intentional misrepresentation and omission of facts material to Claimants' investment activities, and disregarded the Claimants' investment objectives. Claimants maintained that Respondents Pacific and Montauk are vicariously liable for the torts committed by Coogle in the scope of his employment. Claimants further maintained that Respondents Pacific and Montauk violated contractual duties to Claimants and NASD rules by failing to reasonably supervise Coogle's handling of Claimants' accounts.

Respondent Coogle denied all of the Claimants' allegations of wrongdoing. In particular, Coogle alleged that Claimants were fully aware of the risks posed by their investment activities. In support, Coogle stated that Claimants had previously signed forms indicating that their investment objectives were growth and speculation. Coogle also alleged that he never guaranteed Claimants that they would realize profits on their stock investments. Coogle maintained that he never churned Claimants accounts nor did he ever execute an unauthorized trade on those accounts. Coogle further maintained that he believed that his trading activities met NASD mark up standards.

Respondent Montauk alleged that Claimants, when opening their accounts at Montauk, indicated on their New Account form that their investment objectives were "short term trading" and "businessman's risk", that Claimants already held significant positions in speculative stocks, and that Claimants had been trading in such stocks since 1986. Montauk further alleged that it believed that Coogle obtained prior approval for all the transactions he made on Claimants' accounts while the accounts were held by Montauk, and that Claimants, therefore, bear responsibility for their investment losses. Montauk presented evidence that allegedly indicates that its trading of Claimants' accounts substantially complied with NASD mark up and mark down guidelines. Montauk denied the allegations that it was a market maker in any of the penny stocks traded by Claimants. Montauk maintained that it should not be held liable for any of the alleged wrongdoing that occurred before Claimants opened their accounts at Montauk (February 19, 1992), and that its answer would, therefore, not respond to allegations of occurrences taking place before that date. While denying any liability to Claimants, Montauk alleged that if an award were granted in Claimants' favor, that it be limited to the net losses incurred by Claimants only while their accounts were held by Montauk, and that those net losses amounted to \$2209.20.

Montauk offered a number of defenses to the claims against it, including: that Claimants' own negligence and failure to mitigate damages should bar or diminish any recovery against Montauk, that the claims are barred by the statute of limitations and the doctrines of waiver and equitable estoppel, and that the claims are the result of actions and omissions by third parties who were not under the control of Montauk nor were acting under the scope of their employment at Montauk. Montauk also filed a cross claim for indemnification and contribution against Coogle, in which it alleged that Coogle bore responsibility for any finding against Montauk and that Coogle had signed an agreement indemnifying Montauk against losses or attorney's fees incurred in connection with any claims brought by clients of Coogle.

Coogle did not respond to the cross-claim filed against him by Respondent Montauk.

RELIEF REQUESTED

Claimants requested in their pleadings the following relief:

- actual damages to Claimants \$132,197.76;
- punitive damages against Respondents \$396,593.28;
- Claimants' arbitration costs and attorney's fees; and,
- other relief deemed appropriate by the arbitration panel.

Respondent Montauk requested in its pleadings the following relief:

- dismissal of Claimants' claim in its entirety, or in the alternative, dismissal of claim as against Montauk
- an award against Coogle indemnifying Montauk against any liability rendered against Montauk;
- arbitration costs and attorney's fees;
- other relief deemed appropriate by the arbitration panel; and,

Respondent William Coogle requested a dismissal of all claims against him.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel has determined that Respondent Pacific Southern Securities was not served with the Statement of Claim pursuant to section 25 of the Code and did not have notice of the hearing pursuant to section 26 of the Code. Therefore, all claims against Respondent Pacific Southern Securities are dismissed without prejudice.

AWARD

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

1. In favor of Claimant Leone and against Respondents Montauk and Coogle, jointly and severally, in the sum of \$35,739.51;
2. In favor of Claimants Leone and Goehl and against Respondents Montauk and Coogle, jointly and severally, in the sum of \$2,689.00;
3. In favor of Claimant Leone and against Montauk in the sum of \$100,000.00 in punitive damages, pursuant to Willoughby Roofing and Supply Co. v. Kajima International, 776 F.2nd 269 (11th Cir. 1985); Bonar v. Dean Witter Reynolds Inc., 835 F.2nd 1378 (11th Cir. 1988); Diana v. Monroe, 132 Ga.App. 669, 209 S.E.2nd 70 (1974); Official Code of Georgia Section 51-12-5.
4. In favor of Coogle and against Montauk, denying Montauk's crossclaim against Coogle for indemnification and contribution.
5. Each party shall bear its respective costs, including attorneys' fees.

FORUM FEES

Pursuant to section 43c of the Code, the following Forum Fees are assessed:

10 sessions x \$1,000.00 = \$10,000.00

The undersigned arbitrators have determined that the Claimants are responsible jointly and severally for one-third of the cost of arbitration and the Respondent Montauk is responsible for one-third of the cost of arbitration, and the Respondent Coogle is responsible for one-third of the cost of arbitration.


1. Claimants are jointly and severally assessed \$3,333.33. Claimants previously paid \$1,500.00 and owe a balance of \$2,333.33.
2. Respondent First Montauk Securities, Corp. is assessed the sum of \$3,333.33. Respondent First Montauk previously paid \$1,000.00 and owes a balance of \$2,333.33. In addition the Respondent First Montauk Securities Corp. is assessed the sum of \$500.00 representing the member surcharge.
3. Respondent William Coogle is assessed \$3,333.33 in forum fees.

The NASD shall retain the claim filing fees previously paid by the Claimants and the Respondent First Montauk Securities, Corp.

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

Concurring Arbitrators' Signatures
Name

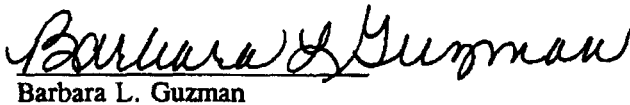
Public/Industry


Joseph Carlisi, Esq.

Public


Martin H. Peabody, Esq.

Public


Barbara L. Guzman

Industry

Date of Decision: December 6, 1995