

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gerald and Louise Gentile

93-05213

Name of Respondents

R.B Webster Investments, Inc.
Warren S. Green

REPRESENTATION

Claimants Gerald and Louise Gentile ("Claimants") appeared pro se.

Respondent R.B. Webster Investments, Inc. ("R. B. Webster") did not enter an appearance in this matter.

Respondent Warren S. Green ("Green") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on December 14, 1993.

The Claimants' Submission Agreement was signed on December 14, 1993.

A Statement of Answer was filed by Respondent Green on April 12, 1994.

Respondent Green's Submission Agreement was signed on April 6, 1994.

HEARING INFORMATION

The hearing was held on February 1, 1995 and lasted one session. The hearing was held at the Hyatt Regency Buffalo located at 2 Fountain Plaza, Buffalo, New York.

CASE SUMMARY

Claimants alleged that in November 1992, Claimants saw a commercial on CNBC advertising First National Films Corporation stock. Claimants were contacted by R. B. Webster Investments, Inc. regarding First National Films and purchased 1,000 shares on November 10, 1992. Claimants also alleged that in early March of 1993, they were contacted by Warren Green, a registered representative with R. B. Webster, advising the Claimants that he would be handling their account and advised Claimants to sell their position in First National Films and purchase a stock called Winner's Circle, a stock in which R.B. Webster was a market maker. Claimants alleged that they were not interested in selling their position in First National Film Corporation.

Further, Claimants alleged that after numerous telephone calls, Claimants inquired as to the nature of Winner's Circle's business and were advised that it was a profitable manufacturer of sports clothing. Claimants also alleged that on April 13, 1993 Green relayed to the claimants that the stock was ready to make a move and persuaded Claimants to purchase 1,000 shares of Winner's Circle for 1 7/8. Later that afternoon Respondent Green allegedly called the Claimants and advised them that he would be able to get another 1,000 shares at the bid price of 2 1/4 as R.B. Webster was a market maker in the stock. Claimants allegedly agreed to purchase the additional 1,000 shares. Claimants then alleged that on April 14, 1993, upon Respondent Green's advice, they purchased an additional 1,500 shares; on April 20, 1993 purchased an additional 1,000 shares; and on April 26, 1993 purchased an additional 500 shares. Further, on June 29, 1993 Respondent Green recommended Claimant purchase Command Credit Corporation stock with the \$1,500.00 that was in Claimants' account. Claimants purchased 2,000 shares of Command Credit.

It was further alleged by Claimants that during July and August of 1993, Claimants called Respondent Green to sell their shares at \$2.62 a share and again at \$2.00 a share but Respondent Green informed them that R.B. Webster was not selling this stock as they were buyers in the stock.

Claimants maintained that Respondent Green did not explain the risk factor involved when buying Winner's Circle stock and alleged that R.B. Webster and its employees manipulated and fixed the price of Winner's Circle stock.

Respondent Green denied all allegations of wrongdoing as asserted against him in the Statement of Claim. Respondent Green maintained that Claimants purchased First National Films through another broker that left R.B. Webster prior to his taking over the account. Respondent Green also maintained that he advised Claimants to sell their First National Films position due to the negative publicity surrounding this investment.

Further, Respondent Green maintained that he recommended Winner's Circle, now known as Sky Scientific, to the Claimants who subsequently complained about the mark up on the stock. Respondent Green allegedly explained to the Claimants that as a market maker in the stock R.B. Webster was permitted to mark up the stock using a 5% guideline.

Respondent Green maintained that Claimants could have sold the Winner's Circle and Command Credit Corporation stock on their own initiative at any time as the stock certificates were in Claimants possession.

Respondent R.B. Webster Investments, Inc. did not file a Statement of Answer.

RELIEF REQUESTED

Claimants requested an award in their favor in the amount of \$8,740.00. At the hearing, Claimants also requested an award of interest from the date of purchase and reimbursement of costs and expenses associated with this proceeding.

Respondent Green requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings with regard to Respondent R.B. Webster:

In accordance with Section 1 and 8 of the Code of Arbitration Procedure ("the Code"), the panel ruled that it had jurisdiction over Respondent R.B. Webster;

In accordance with Section 25 of the Code, Respondent R.B. Webster was served with the Statement of Claim and given an opportunity to respond which Respondent R.B. Webster failed to do;

In accordance with Section 21 and Section 26 of the Code, Respondent R.B. Webster was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;

In accordance with Section 29 of the Code, the panel ruled that Respondent R.B. Webster had adequate notice of this hearing and determined to proceed with Respondent R.B. Webster as a party in its absence.

By letter dated January 5, 1995 Respondent Green requested permission from the arbitration panel to permit him to participate in the proceedings telephonically. The parties were notified that this request had been denied by letter dated January 6, 1995.

The arbitration panel made the following rulings with regard to Warren S. Green:

In accordance with Section 1 and 8 of the Code of Arbitration Procedures ("the Code"), the panel ruled that it had jurisdiction over Respondent R.B. Webster;

In accordance with Section 21 and 26 of the Code, Respondent Green was given due notice of the hearing procedure by regular an certified mail and failed to appear at the hearing;

In accordance with Section 29 of the Code, the panel ruled that Respondent Green had adequate notice of this hearing and determined to proceed with Respondent Green as a party in his absence.

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 Warren S. Green be and hereby is liable and shall pay to the Claimant the sum of \$8,740.00, plus interest at the rate of 9% per annum from the date of purchase.
- 2) Each party shall bear their respective costs.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$75.00 non-refundable filing fee and the \$75.00 hearing session deposit.

Arbitrator's Signature

Name

David Fogel
David Fogel, Esq.

STATE OF
COUNTY OF

On this 27th day of March, 1995, before me personally appeared David Fogel, Esq. known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

Diane S. Fogel

Executed on:

Date of Decision: 3/30/95

COUNTY OF BERGEN
STATE OF NEW JERSEY
DIANE S. FOGEL
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 6, 1999
I.D. NO. 2169521

Date of Decision March 30, 1995