

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eileen D. Brennan

93-05324

Name of Respondents

J. W. Gant & Associates, Inc.,

J. W. Gant, and

Peter Lucina

REPRESENTATION OF PARTIES

Claimant Eileen D. Brennan ("Brennan") was represented at the hearing by John J. Morrison, Esq. of Chicago, Illinois.

Respondent J. W. Gant & Associates, Inc. ("J. W. Gant & Associates") did not appear at the hearing.

Respondent J. W. Gant ("Gant") did not appear at the hearing.

Respondent Peter Lucina ("Lucina") was represented at the hearing by Matthew D. Wayne, Esq. of Fishman & Merrick, P.C., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant Brennan on December 23, 1993. The Uniform Submission Agreement was signed by Brennan on December 14, 1993.

A Statement of Answer was filed by Respondent Lucina on March 2, 1994. The Uniform Submission Agreement was signed by Lucina on February 28, 1994.

Respondents J. W. Gant & Associates, Inc. and J. W. Gant did not file a Statement of Answer and did not execute a Uniform Submission Agreement. (See Other Issues).

HEARING INFORMATION

The hearing was held on October 25, 1994 in Chicago, Illinois for a total of one (1) hearing session.

CASE SUMMARY

Claimant Brennan alleged in her Statement of Claim that in June 1989 Respondents J. W. Gant, J. W. Gant, & Associates, and Peter Lucina solicited a purchase by her of 1000 shares of Stateswest Airlines, Inc. in a high pressure cold call. Brennan alleged that such investment was unsuitable for her in light of the fact that she is retired and a widow, and was made without regard for her investment needs or financial circumstances.

Respondents J. W. Gant & Associates, Inc. and J. W. Gant did not file an answer to these allegations.

Respondent Lacina in his Answer denied each and every substantive allegation contained in the Claim. Respondent Lacina set forth the following affirmative defenses in his Answer: the Claimant's claims are barred by the doctrine of ratification, and by the applicable statute of limitation.

RELIEF REQUESTED

Claimant Brennan requested damages in the amount of \$2,500 representing \$880 in out-of-pocket damages plus interest, and reasonable attorney fees.

Respondents J.W. Gant and Associates, Inc. and J. W. Gant did not answer the Statement of Claim.

Respondent Lucina requested that the Statement of Claim be dismissed with prejudice, and that he be awarded his costs and expenses, including attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the panel has determined that Respondent J. W. Gant & Associates, Inc. has been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent J. W. Gant & Associates, Inc. had received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.

Respondent J. W. Gant & Associates, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the Code, and is bound by the determination of the arbitration panel on all issues submitted.

Upon review of the file and the representations made on behalf of the Claimant, the panel has determined that Respondent J. W. Gant has not been properly served with the Statement of

Claim pursuant to §13 and §25 of the Code. The panel also determined that Respondent J. W. Gant had not received due notice of the hearing as required under §26 of the Code and that therefore the statement of claim is dismissed as to him individually.

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. Respondents, J.W. Gant & Associates, Inc. and Peter Lucina, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Eileen D. Brennan, damages for out-of-pocket losses in the sum of Eight Hundred and Eighty Dollars and No Cents. (\$880.00).
2. The Statement of Claim against Respondent J. W. Gant, individually, is hereby dismissed in its entirety.
3. The parties to this matter shall bear their own costs.
4. Any relief not specifically provided for herein is denied.

FORUM FEES

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing session x \$25 = \$25.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$25, and the hearing session deposit in the amount of \$25, previously paid to the NASD by Claimant.

By The Arbitration Panel:

Dated:

11-23-94

s/s Robert P. Scales, Esq.
Robert P. Scales, Esq., Presiding
Public Arbitrator

Date Award Served By The NASD: December 1, 1994.