

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert and Robert Mark McAllister, JTWROS

94-00121

Name of Respondents

Robert Thomas Securities
Richard Vigsnes

REPRESENTATION OF PARTIES

Claimants Robert and Robert Mark McAllister ("the McAllisters") were represented at the hearing by J. Michael Fitzsimmons, Esq. of Fitzsimmons, Robert & Paine, of Chicago, Illinois, and by James J. Moylan, Esq. of James J. Moylan & Associates, Ltd., of Chicago, Illinois.

Respondents Robert Thomas Securities ("Robert Thomas") and Richard Vigsnes were represented at the hearing by Phillip M. Goldberg, Esq. of Coffield, Ungaretti, & Harris, of Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimants Robert and Mark McAllister on January 11, 1994. The Uniform Submission Agreement was signed by Robert McAllister on January 14, 1994.

A joint Statement of Answer was filed by Respondents Robert Thomas and Richard Vigsnes on April 14, 1994. The Uniform Submission Agreement was signed by Paul L. Matecki, Corporate Counsel, on behalf of Robert Thomas on April 13, 1994. The Uniform Submission Agreement was signed by Respondent Richard Vigsnes on March 25, 1994.

HEARING INFORMATION

The hearing was held on October 27, 1994 in Chicago, Illinois for a total of (2) hearing sessions.

CASE SUMMARY

Claimants Robert and Robert Mark McAllister alleged in their Statement of Claim that in December of 1991, Respondents Robert Thomas and Richard Vignses executed an unsolicited purchase order for 10,000 shares of Perrigo Company ("PRGO") stock on margin. Claimants further alleged that subsequent to the purchase, Respondent Vignses learned that PRGO stock was not marginable, erroneously informed Claimants that the account would be frozen unless they obtained additional margin, and as a result Claimants were forced to sell other securities at a loss. Claimants alleged that the actions of Respondents violated §12(2) of the Securities Act of 1933, and §12 and 13D of the Illinois Securities Law of 1953, as Amended, and constituted breach of contract and fiduciary duty, negligence, and misrepresentations and omissions of material facts.

Respondents in their Answer denied each and every substantive allegation contained in the Claim. Respondents set forth the following affirmative defenses in their Answer: failure to state a claim upon which relief may be granted; the Claimants' claims are barred by the doctrines of estoppel, ratification and waiver, and by the applicable statute of limitations; Claimants did not exercise reasonable care and any losses were the result of their own contributory negligence; Respondents acted in good faith, did not intend to deceive or defraud, and did not act with scienter; Respondents' handling of Claimants' account was in accordance and compliance with brokerage industry standards and regulatory requirements; any injury or loss was the result of superseding or intervening causes beyond Respondents' control; and Claimants failed to mitigate their damages.

RELIEF REQUESTED

Claimants Robert and Robert Mark McAllister requested damages in an amount of at least \$100,000 plus costs, filing fees, and such other relief deemed just.

Respondents Robert Thomas and Richard Vignses requested that the Statement of Claim be dismissed and that they be awarded their costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original(s) remain 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 Claimants Robert and Robert Mark McAllister, is denied and dismissed in its entirety.
2. Respondent, Robert Thomas, shall be and hereby is liable for, and shall pay to Claimants, Robert and Robert Mark McAllister, Six Hundred Fifty Dollars and No Cents (\$650.00) as reimbursement for the initial filing fee and hearing session deposit previously paid to the NASD by Claimants.
3. 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:

2 hearing sessions x \$500 = \$1,000.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150, and the hearing session deposit in the amount of \$500 previously paid to the NASD by Claimants.

The panel has ordered that the Respondent, Robert Thomas, pay additional forum fees to the NASD in the amount of \$500.

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

By The Arbitration Panel:

Dated:

12/1/94

s/s Richard Clemens, Esq.
Richard Clemens, Esq., Presiding
Public Arbitrator

11/18/94

s/s Everett A. Roberts
Everett A. Roberts
Public Arbitrator

11/17/94

s/s Craig W. Henderson
Craig W. Henderson
Industry Arbitrator

Date Award Served By The NASD: 12/9/94