

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Gale C. Long,
Claimant,

v.

No. 94-00126

John Rosenow, and
Rauscher Pierce Refsnes, Inc.
Respondents

REPRESENTATION OF PARTIES

Claimant Gale C. Long ("Claimant") was represented by Sharyl L. Poulson, Esq., Scottsdale, Arizona.

Respondents John Rosenow and Rauscher Pierce Refsnes, Inc. ("Respondents") were represented by Joel P. Hoxie, Esq., and Christopher J. Littlefield, Esq., of Snell & Wilmer, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about December 29, 1993. Claimant's Submission Agreement was signed on December 29, 1993.

Respondents' Statement of Answer was filed on or about March 30, 1994. Respondents' Submission Agreement was signed on March 28 and 30, 1994.

HEARING INFORMATION

Hearing date: March 9, 1995. One (1) session.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that Respondents: Violated A.R.S. Section 44-1991; breached their fiduciary duty to the Claimant; committed fraud; acted negligently in regards to the Claimant's account; and breached their contract with the Claimant. The allegations arose out of options and margin transactions in his account. The securities involved in this case were more fully covered at the hearing in this matter.

Respondents denied all allegations of wrongdoing, including, without limitation, allegations that they made any material misrepresentations or omissions to the Claimant; that they violated A.R.S. Section 44-1991; that they breached any duty, fiduciary or otherwise, owing to Claimant; that they breached any contract between the parties; or that they did or failed to do anything which would entitle Claimant to the award of any damages. In addition, Respondents asserted the following affirmative defenses:

1. Respondents deny that they made any material misrepresentations or omissions to Claimant. Respondents also denied that they violated A.R.S. Section 44-1991 or that they engaged in any fraudulent conduct.

2. Respondents further denied that they breached any contract with Claimant or that their conduct fell below the applicable standard of care, was negligent, or constituted a breach of any duty, fiduciary or otherwise, that may have been owed to Claimant.

3. Respondents asserted that Claimant's claims are barred by the doctrines of ratification, waiver or estoppel. Respondents further alleged that Claimant's investment losses were not proximately caused by any alleged wrongdoing on their part.

4. Claimant's claims are further barred by the release which Claimant executed of his own free will and which specifically released both known and unknown causes of action as of December 14, 1992, the date of the release.

5. The claim for punitive damages is wholly insufficient under Arizona law because Claimant does not, and cannot, allege facts susceptible of establishing that Respondents acted with the requisite "evil mind" and intent to injure.

RELIEF REQUESTED

Claimant requested an award in his favor for all damages Claimant has suffered as a result of Respondents' misconduct; punitive damages in an amount adequate to punish and deter Respondents from any such future misconduct; attorneys' fees pursuant to A.R.S. Sections 12-341.01 and 44-2001; costs; and for such other relief as the arbitration panel deemed just and proper.

Respondents requested that Claimant's claims against it be dismissed in their entirety and that Respondents be awarded their costs and reasonable attorneys' fees incurred herein.

OTHER ISSUES CONSIDERED & DECIDED

Respondents made a Motion to Dismiss the Statement of Claim based on a Release signed by Claimant in 1992. Respondents asserted, in their motion, that the Release was part of a Settlement Agreement entered into between the parties. After review of the motion, review of the parties' responses, and deliberation, the arbitrators took the motion under advisement to be re-raised after the close of Claimant's case.

At the close of Claimant's case, Respondents re-raised their Motion to Dismiss. After hearing argument from the parties, and deliberation, the undersigned arbitrators granted Respondents' motion.

AWARD

After considering the pleadings, pre-hearing submissions, 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. Claimant Gale C. Long's claims asserted against the Respondents John Rosenow and Rauscher Pierce Renfsnes are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

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

1 hearing session x \$400.00 = \$400.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

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

CONCURRING ARBITRATORS

Dated:

Name:

March 9, 1995

Bernard W. Slater /s/
Bernard W. Slater
Presiding Chair
Public Arbitrator

March 9, 1995

William M. Howard /s/
William M. Howard
Public Arbitrator

March 9, 1995

James Kaiser /s/
James Kaiser
Industry Arbitrator