

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Tony Wood,
Claimant,

v.

No. 94-00221

Robert Todd Financial Corporation,
Al Bordeaux, and
Wertheim Schroeder & Co.
Respondents

REPRESENTATION OF PARTIES

Claimant Tony Wood ("Claimant") was represented by Jeffrey Weston Shields, Esq., of Purser & Edwards, Salt Lake City, Utah.

Respondent Robert Todd Financial Corporation ("Robert Todd") was represented by Leslie K. Case, Esq., of Gersten, Savage, Kapowitz & Edwards, New York, New York.

Respondent Al Bordeaux ("Bordeaux") appeared pro se.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 20, 1994. Claimant's Submission Agreement was signed on December 14, 1993.

Robert Todd's Statement of Answer was filed on or about April 21, 1994. Respondent's Submission Agreement was signed on April 20, 1994.

Bordeaux's Statement of Answer was filed on or about April 6, 1994. The NASD does not have a record of Bordeaux having filed a Submission Agreement.

Claimant's and Robert Todd's Stipulated Facts filed on or about December 2, 1994.

A Stipulation of Dismissal of Wertheim Schroeder & Co. as a Respondent in this proceeding was filed on or about December 2, 1994.

HEARING INFORMATION

Hearing date: December 6, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that on or before September 15, 1993, Claimant delivered to Robert Todd certificates in his name representing shares held in Aspen Marine ("Aspen"). Claimant further alleged that he had requested Robert Todd to sell the Aspen shares and to deliver the proceeds to him. The shares were sold, and the net proceeds on the sale were approximately \$45,000.00. Claimant next alleged that, without Claimant's authorization and knowledge, Robert Todd directed that the proceeds on the Aspen shares be used to purchase another unidentified security. The security lost most of its value, and left Robert Todd unable to realize and deliver the proceeds from the sale of the Aspen shares. Claimant stated that he made demand on Bordeaux for delivery of the Aspen proceeds. Claimant also stated that he was required to send a letter reflecting a resolution of the Aspen dispute. The proceeds would be released after Robert Todd received the letter. Claimant further stated that the letter was sent, per the request, and that Bordeaux and Robert Todd have failed to deliver the proceeds of the Aspen sale to Claimant.

In its Answer, Robert Todd denied any liability as alleged in the Statement of Claim. Robert Todd asserted that Claimant gave express instructions to Bordeaux to sell his Aspen shares so that Claimant could purchase KLH Engineering Group, Inc. ("KLH"). Immediately after the purchase, KLH experienced a precipitous decline in price. Robert Todd further asserted that Claimant's purchase of KLH occurred within days of Claimant's opening his account, and that Robert Todd's supervision of Bordeaux was appropriate and sufficient to have reasonably detected any wrongdoing in Bordeaux's servicing of Claimant's account. In addition, Robert Todd asserted the following affirmative defenses:

1. Claimant has failed to state a claim upon which relief may be granted.
2. Claimant authorized, accepted and/or ratified each and every transaction of which he now complains.
3. Any losses sustained by the Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on Respondent's part.
4. Claimant has failed to mitigate damages incurred after Claimant knew or should have known of the alleged wrongdoing, and any damages to which Claimant may be entitled, which Robert Todd denies, must be reduced by the amount by which such damages would have been mitigated.
5. Claimant is precluded from recovery by the principles of laches, ratification, waiver and estoppel.

For his Answer, Bordeaux denied the allegations contained in the

Statement of Claim. Bordeaux asserted that the Claimant was a stock promoter who, with his partner, Mr. Slater, had contacted him about purchasing stocks that they had recommended. Bordeaux stated that he refused to follow any suggestions until the KLH transaction. Bordeaux further asserted that on Claimant's direction, he sold AMGI and purchased 100,000 shares of KLH. Bordeaux also stated that when he refused to purchase securities in an amount equal to those purchased by the Claimant in KLH, Claimant threatened Bordeaux that he would deny everything, and that he would put Bordeaux out of business for conducting unauthorized trades.

RELIEF REQUESTED

Claimant requested judgement against the Respondents as follows:

- A. As against Bordeaux and Robert Todd:
 - 1. Principal sum of \$45,000.00;
 - 2. Interest on all sums-awarded at the maximum legal rate;
 - 3. For an award of reasonable attorney's fee;
 - 4. For an award of costs; and
 - 5. For exemplary damages in an appropriate sum.
- B. For such other and further relief as the panel deems just and equitable in the circumstances.

Robert Todd requested that Claimant's Statement of Claim be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Bordeaux did not file with the NASD a properly executed submission to arbitration. Bordeaux is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code"), and having answered the claim, appeared and testified at the hearing and, therefore, is bound by the determination of the panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have 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. Claimant Tony Wood's claims against Al Bordeaux and Robert Todd Financial Corporation are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall be responsible for their costs and attorneys' fees associated with this arbitration.

FORUM FEES

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

2 hearing sessions x \$400.00 = \$800.00

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.

Additional forum fees in the amount of \$400.00 are assessed against the Claimant.

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

CONCURRING ARBITRATORS

Dated:

Name:

December 13, 1994

Kevin Olson/s/
Kevin Olson
Presiding Chair
Public Arbitrator

December 12, 1994

Douglas E. McArthur/s/
Douglas E. McArthur
Industry Arbitrator

December 16, 1994

Allan Levy/s/
Allan Levy
Public Arbitrator

Date of Service by the NASD: 12/16/94