

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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FLORIDA

In the Matter of the Arbitration Between

Name of Claimant

John Younghaus

J

94-00301

Names of Respondents

J.W. Gant and Associates, Inc.
Russell Haraburda
Tim Wynne

REPRESENTATION

For Claimant, John Younghaus ("Younghaus"): Patrick A. Davis, Esq.,
Clearwater, Florida.

For Respondent, J.W. Gant and Associates, Inc. ("JWG"): pro se.

For Respondent, Russell Haraburda ("Haraburda"): pro se.

For Respondent, Tim Wynne ("Wynne"): Anthony DiFilippo, IV, Esq., of
DiFilippo, Bennett & Daumen, East Aurora, NY.

CASE INFORMATION

Statement of Claim filed: 1/24/94.

Claimant's Submission Agreement signed on: 1/20/94.

Respondent, JWG did not file an executed Submission Agreement or Statement of Answer as required under Sections 12 and 25 of the Code of Arbitration Procedure. (See "Other Issues").

Statement of Answer filed by Respondent, Haraburda, 3/25/94. Respondent, Haraburda, did not execute a submission agreement as required under Sections 12 and 25 of the Code of Arbitration Procedure.

Respondent, Wynne's, Statement of Answer filed: 3/15/94.

Respondent, Wynne's, Submission Agreement signed on: 3/10/94.

HEARING INFORMATION

Hearing Date/Sessions: 5/19/95-One (1) session.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimant alleged that he was and continues to be an unsophisticated investor and that in November of 1991 he was contacted by Respondents and solicited to open an account at JWG; that at the time of opening the account he advised Respondents that he was unemployed and that he sought conservative, good quality investments that would enable the principal to remain intact and which would be liquid; that he was completely relying on Respondents to properly handle his accounts; that Respondents began a systematic procedure of investing in highly speculative and unsuitable over the counter stocks, unauthorized trading and churning in his account. Claimant stated that the risks of that type of trading were never disclosed to him and that as a result he suffered substantial losses. Claimant further alleged that the primary theories of his Claim involve violations of Chapter 517 Florida Statutes, specifically the misrepresentation and omission provisions of 517.301, a breach of fiduciary duty, negligence, gross negligence, misrepresentation and fraud in the sale of securities.

Respondent, Wynne, in his Statement of Answer, denied all allegations of wrongdoing contained in the Statement of Claim and further, asserted a Cross-Claim against, JWG and Haraburda for contribution and/or indemnification.

RELIEF REQUESTED

Claimant requested damages in the amount of \$38,764.00 including interest.

OTHER ISSUES CONSIDERED & DECIDED

1. On May 15, 1995 Claimant filed with the NASD a "Stipulation of Discontinuance and Dismissal" thereby dismissing Respondent, Wynne, with prejudice from this case.
2. Respondent, Haraburda, was removed as a party to this case based upon the "Suggestion of the Pendency of Bankruptcy Proceeding" submitted by Haraburda on May 17, 1995.

3. Respondent, JWG, did not submit an executed Submission Agreement or Statement of Answer nor did it appear at the hearing. Based upon the evidence submitted at the hearing this Arbitrator found that jurisdiction existed pursuant to Section 12 (a) of the code of Arbitration Procedure. Pursuant to Section 29 of the Code of Arbitration Procedure, the Arbitrator proceeded with the hearing in JWG's absence.

4. All parties present at the hearing agreed that a hand written, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator, having found evidence of violations of chapter 517.301 Florida Statutes by JWG and its employees and that Respondents were registered under Chapter 517, decided that JWG is accountable for a series of Claimant's damages. Therefore, Respondent, JWG, is found liable and shall pay to Claimant the sum of \$20,000.00 including interest and costs.

OTHER COSTS

Apart from the Forum Fees assessed below, the parties shall each bear all other costs incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$300.00 (one (1) hearing session X \$300.00).

1. Respondent, JWG, is hereby assessed Forum Fees in the amount of \$300.00 payable directly to Claimant.

2. The NASD shall retain the non-refundable filing fee of \$100.00 paid by Claimant.

3. The NASD shall waive the filing fee owed by Respondent Wynne for the Cross-Claim.

ARBITRATOR

Arbitrator's Signature

James A. Cormack
James A. Cormack
Sole Public Arbitrator

Date of Decision: AUGUST 3, 1995