

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Charles E. Schwall

94-00429

Name of Respondents

Chatfield Dean & Co., Inc. ;
James E. Coath

REPRESENTATION OF PARTIES

For Claimant: Charles E. Schwall ("Schwall") was represented by John S. Stoppelman, Esq., located in McLean, Virginia.

For Respondents: Chatfield Dean & Co., Inc. ("Chatfield") was represented by Christa D. Taylor, Esq., of Chatfield Dean & Co. located in Greenwood Village, Colorado. James E. Coath ("Coath") was represented by James J. Moylan, Esq., of James J. Moylan & Associates, Ltd. located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim was filed on: February 3, 1994.

Claimant's Submission Agreement was signed on: January 26, 1994.

Statement of Answer was filed by Respondent Chatfield: March 21, 1994

Statement of Amended Answer was filed by Respondent Chatfield on: February 28, 1995.

Respondent's Submission Agreement was signed on: March 8, 1995.

Statement of Answer was filed by Respondent Coath on: April 20, 1994.

Respondent's Submission Agreement was signed on: April 14, 1994.

HEARING INFORMATION

Pre-Hearing Conference: April 6, 1995 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: January 15, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Schwall alleged that Respondent Coath, while employed by or acting as an agent for Respondent Chatfield, misrepresented the risks associated with certain investments and guided Schwall into investments which were unsuitable for his investment objectives and financial background. The Claim alleged that:

1. At the time of opening his account with Chatfield, Schwall was within 2 years of retirement and sought investment vehicles designed for income and principal preservation;
2. Coath falsified opening account documents by indicating that Schwall had past investment experience with Merrill Lynch, his net income was \$200,000 per year, and his net worth exceeded \$2,000,000; and
3. After being informed of Schwall's desire for safe investment vehicles, Coath began investing in highly speculative "penny" stocks.

Based on these allegations, Claimant asserted a claim for unsuitability.

Respondents denied the material allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant misrepresented his financial status, was fully informed of the risks associated with all investments, and was barred by res judicata from pursuing damages related to Royce Laboratories Inc.

RELIEF REQUESTED

Claimant requested an entry of an award against Respondents for actual damages in the amount of \$29,516.25 plus interest at the legal rate from August 1991 to the date of the arbitration award, commissions paid, loss of opportunity damages, and punitive damages.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Prior to hearing, the Panel granted Respondents' Motion to Bar all of Claimant's claims for damages arising out of transactions in the stock of Royce Laboratories Inc. because the stock was the subject of a class action lawsuit.

Respondent Coath did not appear at hearing personally, but his counsel was present. Counsel for Coath offered to the Panel a notarized copy of Coath's Statement of Answer. Claimant moved that the Answer be stricken. Upon review, the Panel denied the Motion and accepted the notarized statement of answer into the record.

The parties have agreed that the Award in this matter may be executed in 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 originals remain on file with the NASD.

AWARD

After considering the pleading, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Chatfield Dean & Co., Inc. and James E. Coath are jointly and severally liable for and shall pay to the Claimant, Charles E. Schwall, the sum of \$15,000.00 as actual damages;
2. The claims for punitive damages are dismissed and denied in the entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD shall retain postponement fees in the amount of \$666.68 previously deposited with the NASD by the Charles E. Schwall (\$533.34) and Chatfield Dean & Co., Inc. (\$133.34). In addition, Respondent James E. Coath is liable for and shall pay to the NASD the sum of \$133.34 as postponement fees.

FORUM FEES

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400.00 per session = \$800.00 and one (1) pretrial conference before one (1) arbitrator x \$300.00 = \$300.00 for total forum fees of \$1100.00. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$120.00 and shall refund the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant. Respondents Chatfield Dean & Co., Inc. and James E. Coath are jointly and severally liable for and shall pay to the NASD the sum of \$1,100.00 as forum fees.

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

Concurring Arbitrators' Signatures

Dated:

/s/ David G. Duggan, Esq.
David G. Duggan, Esq.
Public Arbitrator, Presiding Chair

March 26, 1996

/s/ Larry M. Dreyfus, Esq.
Larry M. Dreyfus, Esq.
Public Arbitrator

March 26, 1996

/s/ Daniel J. Foley
Daniel J. Foley
Industry Arbitrator

March 28, 1996

For NASD Use Only
Date Served: April 3, 1996