

N.A.S.D. ANARD

NATIONAL ASSOCIATION OF SECURITIES DEALERSName of Claimants

Paul Donahue & Donald Donahue

94-00658

Name of Respondent

Westonka Investments, Inc.

REPRESENTATION OF PARTIES

Claimants, Paul Donahue & Donald Donahue ("Claimants") were represented at the hearing by Daniel D. Hill, Esq. of Popham Haik Schnobrich & Kaufman, Ltd, Minneapolis, Minnesota.

Respondent, Westonka Investments, Inc. ("Westonka") was represented at the hearing by David A. Orenstein, Esq. of Parsinen Bowman & Levy, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim was filed on February 22, 1994. Claimant's Answer to the Amended Counterclaim was filed on August 5, 1994. Claimants joint Submission Agreement was signed on February 7, 1994.

Statement of Answer and Counterclaim filed by Respondent Westonka on or about March 28, 1994. Amended Answer and Counterclaim filed by Westonka on August 1, 1994. Respondent's Submission Agreement signed on March 28, 1994.

HEARING INFORMATION

The hearing was held on December 13, 1994 for two (2) sessions and on December 14, 1994 for two (2) sessions for a total of four (4) hearing sessions, in Minneapolis, Minnesota.

CASE SUMMARY

Claimants alleged in their Statement of Claim that Respondent Westonka recommended and purchased a highly speculative and unsuitable security, Mirror Technology, Inc. which eventually lost its value. Claimants further alleged that Westonka failed to follow Claimants instructions when told to sell RCM stock.

In its Answer, Westonka stated that when Claimants came to Westonka, their New Client Account Forms indicated that they had

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traded speculatively and that their investment objectives were growth and speculation. Westonka further alleged that Claimants were aware of the risks of trading on margin.

In its counterclaim, Westonka alleged that Claimant's counsel failed to use due diligence to investigate the claim of Donahue, Donahue has failed and refused to pay his margin debt and therefore is in breach of the margin account agreement, and that Claimant's counsel intentionally or negligently made misstatements of fact as to the facts and circumstances surrounding and pertaining to Claimant's purported losses. In their Amended Answer and Counterclaim, Westonka re-stated the allegations set forth in their original Answer and Counterclaim but added a claim for attorney's fees against Popham Haik for failing to dismiss or amend the claim which was alleged to be frivolous.

In its Answer to the Amended Claim and Counterclaim, Claimants generally denied the allegations set forth in the counterclaim.

RELIEF REQUESTED

Claimants requested damages for trading losses in the sum of \$40,386.61 for Paul Donahue and \$12,542.15 for Donald Donahue, plus lost profits, punitive damages, and attorney's fees. Claimants also requested that they be awarded additional attorney's fees for defending the counterclaim.

Respondent requested that the panel dismiss Claimant's Petition for Relief, enter judgment in favor of their counterclaim and award them the sum of \$23,586.20 against Claimant Paul Donahue, direct Popham Haik to pay them their costs, disbursements, and attorney's fees and grant any further and just relief as the panel deems equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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 originals 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. Respondent Westonka shall be and hereby is liable for and shall pay to Claimant, Paul Donahue, compensatory damages in the sum of Fifteen Thousand, Five Hundred Eighty Two Dollars and Twenty Five Cents (\$15,582.25);

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2. Respondent Westonka shall be and hereby is liable for and shall pay to the Claimant, Paul Donahue, interest at the legal rate beginning to accrue on the date the award is issued to the parties;

3. The Claims asserted by Claimant, Donald Donahue, against Westonka are denied and dismissed;

4. The request for punitive damages is denied;

5. All Counterclaims filed by Respondent Westonka against Claimants and their counsel are denied and dismissed;

6. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated herein.

FORUM FEES

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

4 hearing sessions x \$500 = \$2000 minus the hearing session deposit of \$500 = net \$1500 due to the NASD.

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

The panel has ordered that Respondent Westonka pay the additional forum fees in the sum of \$1500 plus the sum of \$500 for the nonrefundable filing fee for its counterclaim.

The additional Forum Fees assessed by the panel against Westonka in the amount of \$2000 are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

2/22/95

s/s Charles D. Reite
Charles D. Reite, Esq.
Presiding, Public Arbitrator

1/30/95

s/s Benita Sirkin
Benita Sirkin
Public Arbitrator

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1/27/95

s/s Edward C. Oliver
Edward C. Oliver
Industry Arbitrator

Date Award Served By The NASD: 2/24/95
