

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Brooks St. John Smith, and
Amy Ryden,

Claimants,

v.

No. 94-00713

Peacock, Hislop, Staley & Given, Inc., and
Derrick Doba,

Respondents.

REPRESENTATION OF PARTIES

Claimants Brooks St. John Smith, and Amy Ryden ("claimants") were represented by Terrance J. Flemming, Esq., of Lindquist & Vennum, Minneapolis, Minnesota.

Respondents Peacock, Hislop, Staley & Given, Inc., and Derrick Doba ("Respondents") were represented by Gary S. O'Rafferty, Esq., and David R. Jordan, Esq., of Titus, Brueckner & Berry, Phoenix, Arizona.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 23, 1994. Claimants Submission Agreement was filed on March 8, 1994.

Respondents' Answer and Counterclaim was filed on or about May 4, 1994. Respondents Submission Agreements were signed on May 23, 1994.

HEARING INFORMATION

Hearing dates: December 5, 1994. Two (2) sessions.
December 6, 1994. Two (2) sessions.
December 7, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant(s), alleged that Respondents: Violated Section 12(2) of the Securities Act of 1933; violated Section 10 of the Securities and Exchange Act of 1934 and Rules 10b-5 promulgated thereunder; violated Arizona state securities laws, A.R.S. Section 44-1991; committed racketeering in violation of A.R.S. Section 13-2301 (D) (4) (r) and A.R.S. Section 13-2301 (D) (4) (t); breached express and implied contracts with Claimants; breached their fiduciary

duties to Claimants; committed fraud, negligent misrepresentation and negligence; aided and abetted the federal and state securities fraud, racketeering and common law violations by William Archer; consciously pursued a course of conduct knowing that their conduct was outrageous and intolerable; acted intentionally, maliciously, and with indifference and reckless disregard of Claimants' rights; committed negligent supervision and violated Section 15 of the Securities Act of 1933, Section 20(a) of the Securities and Exchange Act of 1934, and the Arizona Blue Sky Law, and violated common law principles of agency and respondeat superior; and violated Section 27, Article III of the rules of fair practice of the National Association of Securities Dealers. The allegations arose out of a series of transactions by Respondents, and William Archer, acting under a power of attorney from the Claimants, in options and stocks more fully discussed at the hearing in this matter.

In their joint Answer, to the extent not expressly admitted or denied, Respondents denied each and every allegation set forth in the Statement of Claim. Respondents also asserted that: Claimants legal claims were deficient either as a matter of law or because they could not be supported by fact; Claimants made no investment decisions, all decisions were made by William Archer; Respondents did not control Claimants' account, Mr. Archer controlled all of the investment decisions and trading in Claimants' account; Respondents were not fiduciaries, Claimants had only occasional conversations with Respondents and placed no reliance on Respondents for investment decisions; Claimants relied upon and had a special relationship or trust and confidence with Mr. Archer; and Claimants' legal claim for Racketeering does not meet the new standards under Arizona Law.

For their Counterclaim, Respondents alleged that Claimants breached their written contracts with Respondents. The alleged breaches are as follows: Claimants breached the provisions in the Client Account Agreement by failing to object to the transactions in their account in writing within ten days after mailing of statements and confirmations, and by failing to notify the manager in writing of any transactions which were not suitable for Claimants; Claimants had given a limited Power of Attorney to William Archer to buy and sell securities in their account. In order for Respondents to allow trading in Claimants account by Mr. Archer, Claimants agreed to ratify all transactions in their accounts by their attorney-in-fact, and to indemnify and hold Respondents harmless of any loss or damage by reason of the transactions completed by Mr. Archer; and Claimants had signed and Option Account Agreement and Approval Form, upon which Respondents relied, where Claimants had given specific representations that the trading of options was not suitable in light of investment objectives, financial situation, and knowledge.

RELIEF REQUESTED

Claimants requested the following relief against the Respondents:

1. Payment of their actual damages of \$481,397.00 plus interest and costs against Respondents; or alternatively, treble damages of the out-of-pocket loss in the amount of \$691,758.00.
2. Punitive damages of \$1 million;
3. Reasonable attorneys' fees pursuant to A.R.S. Section 44-2002 and/or A.R.S. Section 13-2314; and
4. Such other relief as allowed by law and as the panel deems just and equitable.

Respondents requested that the arbitrators:

1. Dismiss in their entirety each and every legal claim set forth in the Statement of Claim and award nothing thereon;
2. Find in favor of Respondents on their Counterclaim and award damages in the amount of Respondents' costs and attorneys' fees in defending this action as proved by post-hearing affidavit;
3. As relief granted alternatively to that sought in paragraph 2 above, award Claimants their costs and attorneys' fees in defending this action pursuant to A.R.S. Section 12-341.01;
4. Award all hearing session and other forum fees arising from this action against the Claimants; and
5. Grant such other and further relief to Respondents as the arbitrators deem just and equitable in the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

On July 11, 1994, Respondents filed Motion for Summary Award along with a Statement of Facts supporting their Motion for Summary Award. Respondents also filed Replies in support of their Motion for Summary Award. Claimants filed their Response to the motion of August 8, 1994. Claimants also filed a Response to Respondents' Reply in support of their motion. After review

of all of the documents submitted, and deliberation, the undersigned arbitrators denied the Motion for Summary Award.

On December 7, 1994, at the close of Claimants' case, Respondents made a Motion to Dismiss. After hearing argument from the parties, and deliberation, the panel granted the motion.

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. Claimants claims against the Respondents are, and each of them, denied and dismissed with prejudice.
2. Respondents/Counterclaimants' claims against the Claimants/Counterrespondents 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:

6 hearing sessions x \$600.00 = \$3,600.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable claim filing fee in the amount of \$250.00, and shall RETAIN the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimants.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable Counterclaim filing fee in the amount of \$250.00, and shall RETAIN the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Counterclaimants.

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Additional forum fees in the amount of \$2,000.00 are assessed against the Respondents.

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

CONCURRING ARBITRATORS

Dated:

Name:

January 13, 1995

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

January 12, 1995

James C. Sell /s/
James C. Sell
Public Arbitrator

January 13, 1995

R. Ron Heiligenstein /s/
R. Ron Heiligenstein
Industry Arbitrator