

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Vernon W. Cooke

94-01102

Name of Respondents

Global America, Inc.
Michael J. Markowski
Peter Hart

REPRESENTATION

Claimant Vernon W. Cooke ("Claimant") was represented at the hearing by Stephen Topetzes of the law firm of Kirkpatrick & Lockhart and was represented prior to the hearing by Bruce I. Garfield, Investors Arbitration Services, Inc. of Woodland Hills, CA

Respondent Peter Hart ("Respondent" or "Hart")) did not attend the hearing.

Respondents Michael Markowski ("Markowski") and Global America, Inc. ("Global") did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: March 21, 1994
Claimant's Submission Agreement signed on: January 7, 1994

Statement of Answer filed by Hart on: August 10, 1994
Hart did not file a Submission Agreement.

Markowski and Global did not file answers nor did they file submission agreements.

HEARING INFORMATION

Hearing Date/Sessions: November 21, 1995 - one session

Hearing Location: Omni Hotel, Richmond, Virginia

CASE SUMMARY

Claimant alleged that he sent Hart his 1400 shares of Northwest Airline stock and requested that Hart sell these shares and remit the proceeds to Claimant. Claimant alleged that Hart failed to follow Claimant's instructions and that Hart invested the proceeds in various securities without Claimant's knowledge and authorization. Claimant alleged that he made numerous demands for his monies from Hart. Claimant alleged that several weeks later Hart sent Claimant a check for \$66,567.82; the amount Claimant needed to pay his capital gains tax. Claimant alleged that Hart continued to use Claimant's money to invest in securities without authority. Claimant alleged that he made repeated requests to Hart for the stock certificates in securities that Claimant had not authorized, but Hart failed to send Claimant the certificates until they were worthless. Claimant alleged that Hart committed the following wrongdoing: fraud, deceit, omission of material facts, intentional misrepresentation of fact, violations of NASD Rules of Fair Practice, Article III, Section 2, unauthorized trading, breach of fiduciary duty, failure to follow instructions, negligent misrepresentation, breach of implied covenant of good faith and fair dealing.

Hart categorically denied all allegations of wrongdoing. Hart maintained, among other things, that Claimant directed Hart to sell his Northwest Airlines stock and that the sale was confirmed in writing. Hart maintained that Claimant requested a portion of the proceeds from the sale, but that Claimant agreed to invest the monies with Global in various securities. Hart maintained that all investments were discussed with Claimant, authorized by Claimant and confirmed in writing to Claimant. Hart maintained that Claimant did not request that he liquidate Claimant's portfolio instead, in October of 1990, Claimant stated he was pleased with the status of his portfolio. Hart maintained that the investments he recommended to Claimant were sound at the time they were recommended and that he never made any misrepresentations nor did he failed to disclose any material facts to Claimant. Hart maintained that the recommendations he made to Hart were not for the purposes of generating commission but were based on recommendations made by Global as good investments. Hart maintained that Claimant analyzed the materials issued by the corporations that he had invested in. Hart maintained that Claimant on two occasions attended Global conferences where he was able to further analyze and question each corporations financial plans and forecasts.

RELIEF REQUESTED

Claimant requested damages in the amount of \$200,000; pre-award and post-award interest from the date of the original investments as allowed by law; costs of the arbitration including all reasonable consulting fees, attorney's fees and other costs; plus punitive damages in an amount to be determined by the arbitrators.

Hart requested that Claimant's claim be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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.

Claimant, in recognition of the lack of service of the claim and lack of notice of the hearing on Respondents Global and Markowski, withdrew his claim without prejudice against Global and Markowski. The Panel noted that although Claimant's claims against Global and Markowski are within the Panel's jurisdiction to resolve, Claimant's claims against Respondents Global and Markowski have not been properly served on these parties.

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. That Respondent Hart is liable to Claimant and shall pay to the Claimant the sum of \$118,000; plus six percent (6%) simple interest per annum from March 21, 1994 until the date the award is paid. This award is premised on fraud and therefore, is not discharged by Hart's bankruptcy which was finalized in September, 1993.
2. That all parties shall bear their own costs, including attorney's fees, except as indicated below.
3. That Claimant's claim for punitive damages is denied in its entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 sessions X \$750 = \$750 minus hearing session deposit of \$750 = net \$0 due.

The NASD, Inc. shall retain the hearing session deposit previously filed by the Claimant.

DATE:

Concurring Arbitrators' Signatures

12/20/94

Robert O. Harris
Robert O. Harris, Esq., Public Arbitrator
Chairperson

Mary E. Beach, Esq., Public Arbitrator

John J. Muldowney, Industry Arbitrator

Date Award Served by the NASD, Inc.:

January 4, 1996

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