

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Edward Renzelli

94-01604

Name of Respondent(s)

Donald & Co., Securities
John Pappas
Paul James Pongetti

REPRESENTATION

For Claimant, Edward Renzelli ("Renzelli"): Nelson D. Blank, Esq., of Trenam, Simmons, Kemker, Scharf, et al., Tampa, Fl.

For Respondents, Donald & Co. Securities ("Donald & Co."), John Pappas ("Pappas"), and Paul James Pongetti ("Pongetti"): Rebecca A. Henson, Esq., of Johnson, Blakely, Pope, Bokor, et al., Tampa, Fl.

CASE INFORMATION

Statement of Claim filed: April 22, 1994. Claimant's Submission Agreement signed on: April 22, 1994.

Joint Statement of Answer filed by Respondents: July 28, 1994. Respondent, Donald & Co. Securities' Submission Agreement signed on: August 19, 1994 by Gene Stice on behalf of Donald & Co.. Respondents, Pappas and Pongetti's Submission Agreements signed on: July 15, 1994.

HEARING INFORMATION

On May 5, 1995 a pre-hearing conference was held via telephone call with the arbitrator.

On May 11, 1995 a hearing lasting two (2) sessions was conducted in Tampa, Florida.

CASE SUMMARY

Claimant alleged that Respondents violated Sections 10 and 17 and Rule 10b-5 of the Securities Act of 1934 and are liable for misrepresentation, common-law fraud, unauthorized trading, breach of fiduciary duty and negligence. Claimant further alleged that Respondents, through the use of high pressure "boiler room" telephone calls, put him in a position to make hasty and ill-considered investment decisions regarding speculative securities that were misrepresented and unsuitable.

Respondents denied all allegations of wrongdoing and alleged that: the investments that are the subject of this claim were consistent with Claimant's stated investment objectives; Claimant was an experienced investor; and, the actual investments were made through Respondents over a six year period. Respondents alleged that at all material times the Claimant was aware of the risks associated with his investments and voluntarily chose to assume those risks by expressly ordering, approving, participating, and ratifying the acts and transactions that are complained of in this claim. Respondents asserted various other defenses and requested that the claim be dismissed and that Respondents be awarded their attorney's fees and cost incurred, pursuant to Florida Statute, Section 57.105.

RELIEF REQUESTED

Claimant requested damages in the amount of \$16,829.25 which represents loss in the value of the stock, plus interest, attorney's fees and the costs of this arbitration.

Respondents requested dismissal of the claims plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

None

AWARD

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

1. Respondents are found not liable and, therefore, the claims against them are hereby dismissed. The Arbitrator finds that the sole ground upon which the claim was brought was an alleged guarantee that the investments would double or triple. The Arbitrator finds that it was unreasonable for the Claimant, with his trading experience, to believe that any guarantee could exist. Therefore the Arbitrator finds that there was no justiciable issue in this matter.

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Award

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OTHER COSTS

The arbitrator leaves the issue of attorney's fees for determination by an appropriate court of competent jurisdiction.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$1,100.00 (two (2) sessions X \$400.00 per session plus one prehearing conference x \$300.00)

1. Claimant, Renzelli, is hereby assessed \$1,100.00 for which the NASD shall retain the \$400.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due to the NASD of \$700.00.
2. The NASD shall retain the non-refundable filing fee of \$100.00 paid by Claimant.
3. The NASD shall retain the \$200.00 nonrefundable surcharge paid by Respondents.
4. Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature
Name

Public/Industry

15/
James R. Kennedy, Jr., Esq.

Public/Chairman

Date of Decision: 8-4-95