

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donald P. Foley

94-01956

Name of Respondents

Tucker Anthony Incorporated
James Devins

REPRESENTATION

For Claimant: Robert R. Berluti, Esq. of Robert R. Berluti and Associates, of Boston, MA.

For Respondent Tucker Anthony Incorporated ("Tucker Anthony") and Respondent James Devins ("Devins"): Patrick J. Howley, Esq. of Tucker Anthony Inc., of New York, NY.

CASE INFORMATION

Statement of Claim filed: May 24, 1994.

Claimant's Submission Agreement signed on: August 2, 1994.

Joint Statement of Answer filed by Respondents on: October 4, 1994.

Respondent Tucker Anthony's Submission Agreement signed on: October 4, 1994.

Respondent Devins' Submission Agreement signed on October 13, 1994.

HEARING INFORMATION

Pre-Hearing Conference: June 15, 1995.

Hearing Date/Sessions: June 20, 1995 / Two Sessions.

Hearing Location: Boston, Massachusetts.

CASE SUMMARY

Claimant, Donald P. Foley ("Foley"), alleged that when he spoke with his broker, Respondent Devins, an account executive at Respondent, Tucker Anthony, Foley stated that his investment objectives were safety of principal and income.

Claimant alleged that Devins encouraged Foley to open a margin account and an options account. Claimant alleged that Devins misrepresented numerous items on various forms that he filled out.

Claimant alleged that Devins controlled Foley's account without fully consulting with or apprising Foley of actions he was taking.

Claimant alleged that he purchased stock based on misrepresentations that Devins had made to him.

Claimant alleged that the vast majority of the securities purchased for Foley's account were speculative or high risk and were not consistent with Foley's stated investment objectives.

Claimant alleged that his losses exceed \$40,000 plus interest.

Respondents who filed a joint answer denied each and every material allegation in the Claimant's Statement of Claim, including but not limited to those dealing with Claimant's personal circumstances and investment experience.

Respondents denied that the commissions charged to Claimant were excessive in light of his investment objectives, and affirmatively state that the Claimant has not properly plead churning nor offered the required proofs.

Respondents claimed the following affirmative defenses:

- (1) Claimant has failed to mitigate his damages.
- (2) The Statement of Claim fails to state a cause of action upon which relief can be granted.
- (3) Respondents complied with all applicable rules and regulations and acted in good faith and did not directly induce the alleged act or acts, if any, constituting alleged violations of law.
- (4) The damages allegedly suffered by the Claimant have no causal relationship with any act committed by or legally attributable to the Respondents.
- (5) Claimant is estopped by his conduct from maintaining this action against the Respondents.

(6) Claimant's Statement of Claim is barred, in whole or in part, by the doctrine of ratification and affirmance of the conduct alleged.

(7) The injuries, if any, alleged to have been sustained by Claimant, were caused, in whole or in part, by the conduct of the Claimant.

(8) Claimant's Statement of Claim is barred, in whole or in part, by the applicable statute of limitations.

(9) The Claimant did not reasonably rely to his detriment on any action or inaction of the Respondents or any action or inaction legally attributable to the Respondents.

(10) Claimant's claims are barred, in whole or in part, by his assumption of acceptance of the risk of loss.

RELIEF REQUESTED

Claimant requested:

(1) Recovery of his losses calculated to an amount in excess of \$40,000. .

(2) Interest.

(3) Costs of this action.

Respondents requested:

(1) Dismissal of the Claimant's Statement of Claim.

(2) Costs.

(3) Condemnation by the arbitration panel of Claimant's conduct over the past three years (namely Claimant's numerous complaints and threats) so that this proceeding will not become 'another chapter in a never-ending saga'.

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) Tucker Anthony is liable to and shall pay Foley the sum of \$5,375. This sum is inclusive of interest.
- (2) Devins is liable to and shall pay Foley the sum of \$5,375. This sum is inclusive of interest.
- (3) Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

One Pre-hearing session = \$300

Two Regular hearing sessions at \$400 per session = \$800

Hearing sessions altogether ($\$300 + \800) = \$1100, minus Foley's hearing session deposit of \$400 = net \$700 due.

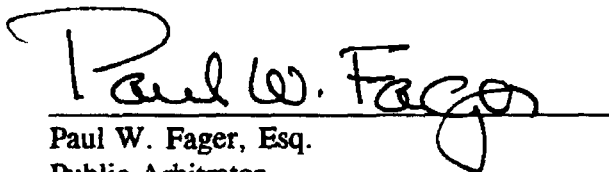
Forum fees Assessed Against: Each side equally.

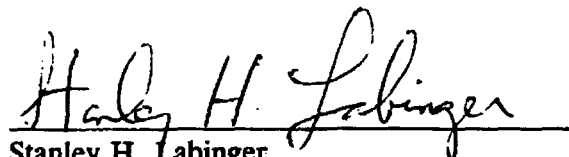
Thus, Tucker Anthony and Devins, are liable jointly and severally and shall pay to the NASD the sum of \$550 in forum fees.

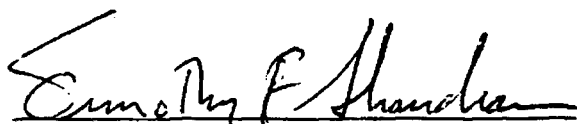
Also, Foley is liable for \$550 in forum fees, minus his \$400 deposit, leaving him liable for \$150. Thus, Foley shall pay to the NASD the sum of \$150 in forum fees.

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

ARBITRATOR'S SIGNATURE


Paul W. Fager, Esq.
Public Arbitrator


Stanley H. Labinger
Public Arbitrator


Timothy F. Shanahan, CFP
Industry Arbitrator

Execution
Date of ~~Decision~~ ~~Execution~~:

6/30/95

Date of Decision: July 17, 1995