

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Burton M. Pike, as Trustee of his IRA Account

94-03138

Name of Respondents

David Magun
J.B. Hanauer & Co.

REPRESENTATION

For Claimant, Burton M. Pike, Russell L. Forkey, Esq. of Fort Lauderdale, Fl.

For Respondent, David Magun ("Magun"), R. Lawrence Bonner, Esq. of Greer, Homer and Bonner, P.A., Miami, Fl.

For Respondent, J.B. Hanauer & Co. ("JBH"), Amanda M. McGovern, Esq. of Kenney Nachwalter Seymour Arnold Critchlow & Spector, Miami, Fl.

CASE INFORMATION

Statement of Claim filed: August 8, 1994

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

Statement of Answer filed by Respondents, Magnum and JBH on: October 28, 1994.

Respondent, JBH's Submission Agreement signed on: October 28, 1994.

Respondent, Magun's Submission Agreement signed on: September 8, 1994.

HEARING INFORMATION

On October 25, 26, and December 14, 15, 1996, in Fort Lauderdale, Florida, hearings lasting 7 sessions were conducted.

damages awarded to Claimants must be reduced due to Claimants' failure to mitigate; and (8) that punitive damages are not permissible in this case.

Respondents, Fahnestock and Viner, denied all allegations of wrongdoing.

RELIEF REQUESTED

Claimants requested damages in the amount of \$267,435.00, plus interest from Smith, Viner and Fahnestock, jointly and severally; damages in the amount of \$149,617.00 plus interest against Smith and RSC, jointly and severally; plus attorney's fees and costs from all Respondents.

Respondent, RSC requested dismissal, attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. On August 25, 1994, Respondent Smith did not appear at the hearing but had advised RSC's counsel to announce he did not object to the hearing proceeding without him and that he would appear on August 26, 1994. The Panel decided to proceed over Claimant's objection and Mr. Smith did appear on August 26, 1994 and confirmed his waiver of appearance on August 25, 1994.
2. 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.

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. Respondents, Smith, Fahnestock and Viner, are found liable, jointly and severally, and shall pay to Claimants the sum of \$112,000.00.
2. Respondents, Smith and RSC, are found liable, jointly and severally, and shall pay to Claimants, the sum of \$44,000.00.
3. Claimants' requests for punitive damages, attorney's fees and prejudgment interest are denied.

OTHER COSTS

None.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$6,000.00 (8 sessions x \$750.00.)
2. Claimants are hereby assessed \$3,000.00 less \$1,500.00 previously deposited, leaving a balance of \$1,500.00 payable to the National Association of Securities Dealers, Inc.
3. Respondents are assessed \$3,000.00, jointly and severally, less \$1,500.00 previously deposited, leaving a balance of \$1,500.00 payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

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Anthony J. Titone, Esq.

Public

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Louise Jeroslow

Public

151
Douglas Delaney

Industry

Date of Decision: 1/6/95