

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joe David Bogle and Mary A. Bogle

95-00661

Name of Respondents

Robert F. Craig
Betty Jean Avery

REPRESENTATION

Claimants Joe D. and Mary A. Bogle ("Claimants") appeared pro se.

Respondent Robert F. Craig ("Craig") did not enter an appearance at the hearing.

Respondent Betty Jean Avery ("Avery") did not enter an appearance at the hearing.

CASE INFORMATION

The Statement of Claim was filed on February 8, 1995. Claimants' Submission Agreement was signed on January 28, 1995.

Respondent Robert F. Craig did not file a Statement of Answer. Respondent Robert F. Craig did not submit a duly executed Submission Agreement. Respondent Betty Jean Avery did not file a Statement of Answer. Respondent Betty Jean Avery did not submit a duly executed Submission Agreement.

HEARING INFORMATION

Hearing Date/Session:

June 17, 1996

one session

The hearing was held at 3490 Piedmont Road in Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that they opened a securities account with CC&Q Investors Diversified, Inc. ("CC&Q") in December of 1993. Claimants further alleged that Respondent Avery was their broker who was supervised by CC&Q's owner, Respondent Craig. Claimants also alleged that upon opening the account Avery told them "I promise to make sound investments, kids. I'm going to make you lots of money." Claimants asserted that they signed a W-9 tax form and shortly thereafter mailed Avery a check for \$30,000.00. Claimants further asserted that they signed a form which provided for the transfer of assets from Bear Stearns to CC&Q.

Claimant Joe David Bogle ("D. Bogle") contended that on December 16, 1993, Avery recommended they purchase Prime Collateral, Inc. ("PC") shares, a penny stock, which he followed based on Avery's assurances of its safety. D. Bogle further contended that on December 22, 1993, Avery recommended that they purchase Environmental Tech USA ("ETU") which he again followed based on Avery's assurances. D. Bogle stated that he asked for information on both stocks but the information was never received. D. Bogle also contended that he received a December account statement which reflected significant losses in stock value. D. Bogle asserted that he contacted Avery and was told that the statement was wrong as the stocks were trading higher than the purchase price and not to worry because he was going to make lots of money. D. Bogle asserted that he asked for a corrected statement and that Avery replied that his next statement would show the corrections.

D. Bogle alleged that on January 11, 1994, Avery convinced them to purchase more shares of ETU at \$.92 a share but he later canceled the transaction after learning that Avery had paid \$1.3123 a share. D. Bogle further alleged that he received the January 1994 account statement which again listed PC's value below the purchase price and which indicated that some shares of MFS stock had been transferred from Bear Stearns. D. Bogle also alleged that Avery assured him the price was a mistake made by the clearing house and he wrote a letter to Bear Stearns instructing them to retransfer the MFS stock. D. Bogle contended that Avery's actions made him suspicious so on February 24, 1994 he sold the PC and ETU shares and was talked into purchasing 13,000 shares of US Environmental Solutions ("USE"). D. Bogle further contended that on paper their asset valued climbed during the month of March.

D. Bogle alleged that on April 21, 1994, Avery informed him that she sold 10,000 shares of ETU at a profit and suggested claimants purchase 15,000 shares of Princeton Electronics ("PE"). Claimants purchased "PE" shares. D. Bogle further alleged that on April 28, 1994, Avery recommended that he purchase shares of Tridon Corporation which he followed. D. Bogle asserted that in May of 1994, USE dropped in value and that the stop loss order he had placed did not result in the sale of the stock. D. Bogle claims that Avery did not answer his question about the stop order and that he was sold additional shares of USE since she assured him the price was on the rise. D. Bogle contended that the June 1994 account showed the continued decline of value in PE and USE and that his attempts to contact Avery were unsuccessful. D. Bogle further contended that through the month of July he was unable to contact Avery so in August, in order to mitigate the damages, he sold PE and USE at considerable losses through Merrill Lynch.

D. Bogle contended that Avery sent them a Penny Stock Risk Disclosure Document which was not received in complete form until May 26, 1994 which was after their purchases of PE and USB. D. Bogle further contended that Avery and Craig breached countless rules, regulations and guidelines required by law for security exchange brokers and due to her false and misleading misrepresentations and omission of disclosures and facts while trading unsuitable stocks. D. Bogle also contended that Respondents practiced a course of business that operated by fraud to convert their funds.

Respondent Betty Jean Avery did not file a Statement of Answer to the Statement of Claim.

Respondent Robert F. Craig did not file a Statement of Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants requested \$25,000.00 in actual damages, \$5,000.00 in compensatory damages, costs, filing fee and hearing session fees.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning Respondents Avery and Craig who did not file Statements of Answer nor Submission Agreements, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondents Avery and Craig were members of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondents Avery and Craig pursuant to Section 12 of the NASD Code of Arbitration Procedure.
3. In view of (2) above, the panel found the Respondents Avery and Craig were required to file with the NASD Statements of Answer and properly executed Submission Agreements pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon Respondents Avery and Craig, pursuant to Section 25(a) of the Code.
4. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the panel found that the NASD provided Respondents Avery and Craig with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without Respondents Avery and Craig, whose absences were unexcused.

The parties who appeared at the hearing 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 who appeared at the hearing 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 Betty Jean Avery and Robert Fitzgerald Craig be and hereby are jointly and severally liable to and shall pay Claimants the sum of \$25,271.14 which represents compensatory damages.
2. All other claims are hereby dismissed
3. Each party shall bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimants and have assessed the following forum fees:

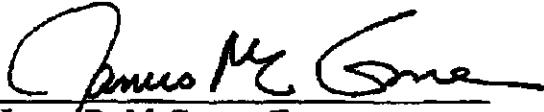
one session x \$400.00	= \$400.00
minus Claimants' \$400.00 deposit	= <u>\$400.00</u>
total outstanding	= \$ 0.00

Respondents Betty Jean Avery and Robert craig Fitzgerald be and hereby are jointly and severally liable for the sum of \$400.00 representing the of the total amount of forum fees assessed. Therefore, Respondents Avery and Fitzgerald are liable to and shall pay Claimant's the sum of \$400.00 representing the hearing session deposit previously paid.

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

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ARBITRATORS' SIGNATURES



James R. McGuone, Esq.
Chairperson

Wayne R. Rasmussen
Panelist

Barbara L. Guzman
Panelist

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Date of Decision: August 13, 1996

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