

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Henry Masakowski, Sr.

Claimant,

v.

No. 95-00866

Securities Planners, Inc.,
Robert Cannon, and
Larry Rosen,

Respondents.

REPRESENTATION OF PARTIES

Claimant Henry Masakowski, Sr. ("Claimant") was represented by David H. Jarvis, Esq. of Singer & Zamanski located in New York, New York.

Respondents Securities Planners, Inc., Robert Cannon ("Cannon"), and Larry Rosen (collectively referred to as "Respondents") did not appear at the Hearing and were unrepresented.

CASE INFORMATION

The Statement of Claim was filed on or about February 21, 1995.

Claimant's Submission Agreement was signed on February 15, 1995.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondents filed a Statement of Answer or properly executed Submission Agreements.

HEARING INFORMATION

The in-person Hearing was held on October 26, 1995 for one (1) session in Southfield, Michigan.

A telephonic Hearing was held on October 11, 1996 for one (1) session.

CASE SUMMARY

Claimant alleged that in mid October, 1993, Claimant received a "cold call" from Respondent Cannon of Securities Planners, Inc., and that Claimant opened an account with Securities Planners, Inc. Claimant asserted that Respondent Cannon was not registered to do business in the State of Michigan. Claimant asserted that his investment objectives were preservation of capital with dividend income and long term growth. Claimant maintained that none of the transactions within Claimant's account, which were all solicited by Respondent Cannon, were within Claimant's articulated investment objectives. Claimant alleged that the actions, inactions, representations, misrepresentations, and omissions by Respondents constituted violations of various affirmative duties to Claimant, including: state securities laws; state common law; federal securities laws; the rules of the NASD and NYSE; Respondents' fiduciary duty to Claimant; and Respondents' non fiduciary duties (negligence) to Claimant.

NASD Regulation, Inc. Office of Dispute Resolution has no record that any of the Respondents filed a Statement of Answer. Respondents failed to appear at the Hearing.

RELIEF REQUESTED

Claimant requested an award of out of pocket losses in the amount of \$8,327.01; an award of interest at 6% from February 18, 1994; an award of attorney fees; an award of all costs; an award of exemplary and/or punitive damages; and the payment of all monies necessary to make Claimant whole.

OTHER ISSUES CONSIDERED & DECIDED

On September 14, 1995, Claimant notified NASD Regulation, Inc. Office of Dispute Resolution that Claimant dismissed all claims against Respondents Securities Planners, Inc. and Larry Rosen without prejudice, and that all claims will be dismissed with prejudice subsequent to full compliance with a settlement agreement entered into between Securities Planners, Inc. and Claimant.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrator has determined that Respondent Robert Cannon has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the

"Code"). The undersigned arbitrator has also determined that Respondent Cannon has received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Robert Cannon did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

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) Respondent Robert Cannon is liable for, and shall pay to Claimant Henry Masakowski, Sr. the sum of Eleven Thousand Five Hundred and Fifty Two Dollars and Twenty Four Cents (\$11,552.24), plus interest at 6% which shall begin to accrue on October 27, 1994 and shall continue to accrue until the date this Award is paid in full;
- (2) The above amount of Eleven Thousand Five Hundred and Fifty Two Dollars and Twenty Four Cents (\$11,552.24) is inclusive of an award of attorney fees and costs. Attorney fees are awarded in reliance of Prince v. Heritage, 109 Mich App 189 (1981); and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$200 = \$400 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$75 and shall **refund** the hearing session deposit in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10332(c) of the Code, Respondent Robert Cannon is liable for, and shall pay forum fees in the amount of \$400.

Pursuant to §10333 of the Code, Respondent Securities Planners, Inc. is liable for, and shall pay the member surcharge fee in the amount of \$100.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Arbitrator's Signature

Richard G. Porter, Esq.

Richard G. Porter, Esq.

Chairperson

Public Arbitrator

November 5, 1996

Dated:

For NASD use only:

Date award served on the parties: November 12, 1996