

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Kevin Pfeifer,

Claimant,

v.

No. 95-00970

Rhodes Securities, Inc., and
James Lynn Marasco,

Respondents.

REPRESENTATION OF PARTIES

Kevin Pfeifer ("Claimant") was represented by Glenn D. Young, Jr., Esq., of Young, Bogle, MCCausland, Wells & Clark, P.A., Wichita, Kansas.

Rhodes Securities, Inc., ("RSI") and James Lynn Marasco ("Marasco") (collectively referred to as "Respondents") were represented by David A. Baugh, Esq., of Mora & Baugh, Ltd., Chicago, Illinois.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 23, 1995. Claimant's Submission Agreement was signed on January 18, 1995.

Respondents' Statement of Answer was filed on or about April 10, 1995. Respondents' Submission Agreements were signed on April 6, and April 4, 1995, respectively.

HEARING INFORMATION

Hearings were held on March 12, and 13, 1996 for two (2) sessions each day, and April 9, and 10, 1996 for two (2) sessions each day in Kansas City, Missouri for a total of eight (8) sessions.

CASE SUMMARY

Claimant alleged that Respondents: made unsuitable recommendations for significant purchases of two highly volatile aggressive growth stocks during a 5 1/2 month period in 1992; charged excessive commissions; induced him to falsify documents which qualified him as an accredited investor so that SGI International Notes could be purchased for his account; breached their contract; and breached

their fiduciary duty. Claimant also alleged that RSI failed to supervise Marasco. The claims arose out of transactions in the following securities: SGI International shares; Best-Buy, Inc. shares; 50-Off Stores, Inc. shares; SGI International Notes and Convertible Preferred Shares ("91-V Units"); and Alliance Short Term Multi-Mkt. Securities.

Unless otherwise admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: Claimant failed to state a cause of action upon which relief can be granted against the Respondents; the claims asserted in the Statement of Claim are barred by the applicable statute of limitations; claimant understood and voluntarily assumed all investment risks in connection with the various stocks and other investments; Claimant's alleged loss was proximately caused or contributed to by his own negligence; Claimant's alleged loss was proximately caused and/or contributed to by the negligence of third parties not under the supervision and control of the Respondents; the Statement of Claim is barred by the doctrines of laches, in that Claimant delayed filing the Statement of Claim for an unreasonable amount of time after he became fully aware of all relevant facts to support his alleged claim; Claimant failed to act promptly and diligently to mitigate any damages he may have sustained; Respondents at all times, acted in good faith and did not directly or indirectly induce any act or acts which may be deemed to constitute any violation or wrongful conduct on the part of the Respondents; and Claimant has alleged no facts or claims which entitles him to an award of attorneys' fees or punitive damages.

RELIEF REQUESTED

Claimant requested an award in the amount of \$236,814 which represents \$190,862 in total funds placed in his trading account less disbursements for SGI International Notes and a small cash withdrawal in April 1992 and the present value of SGI stock of \$12,375, \$25,752 in brokerage commissions paid, and the recovery of the remaining \$20,200 representing the purchase price of the SGI International Notes. Claimant also sought recovery for attorneys' fees in recovering the above funds invested and his expenses and reasonable interest.

Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondents raised orally at the inception of the hearing in this matter, a request that Claimant's claims for breach of contract, breach of fiduciary, duty lack of supervision, and unsuitability be dismissed as barred by statutes of limitations. The arbitrators allowed the parties to file written briefs on the matter prior to decision.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

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

Claimant's claims asserted against the Respondents are, and each of them, denied with prejudice.

Each party shall bear their own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were eight (8) sessions x \$750 = \$6,000 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (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 §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by RSI.

Additional forum fees in the amount of \$5,250 are assessed against the Claimant.

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

Dated:

Leah M. Balk
Leah M. Balk
Public Arbitrator, Presiding Chair

/s/

May 31, 1996

Richard D. Sewell
Richard D. Sewell
Public Arbitrator

/s/

May 26, 1996

George E. Bukaty
George E. Bukaty
Industry Arbitrator

/s/

May 28, 1996