

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

O.D. Griffin

95-01575

Name of Respondent(s)

Chatfield Dean & Company, Inc.

v.

C. Ron Patton, Jr.

REPRESENTATION

For Claimant: Ricky L. Bradley, Esq. and Charles Dalziel, Esq. of the law firm of Savell & Williams, Atlanta, Georgia.

For Respondent Chatfield Dean & Company, Inc.: Christa D. Taylor, Esq., in house counsel.

The Third Party Respondent C. Ron Patton, Jr. ("Patton") appeared pro se.

CASE INFORMATION

Statement of Claim filed: March 29, 1995.

Amendment to the Statement of Claim dated: May 30, 1995.

Claimant's Submission Agreement signed on: November 17, 1995.

Respondent Chatfield Dean & Company, Inc.'s ("Chatfield Dean") Motion to Dismiss filed on: May 15, 1995.

Response to Respondent Chatfield Dean & Company, Inc.'s Motion to Dismiss dated: May 30, 1995.

Statement of Answer and Third Party Claim filed by Respondent Chatfield Dean & Company, Inc. on: September 5, 1995.

Respondent Chatfield Dean & Company Inc.'s Submission Agreement signed on: May 25, 1995.

Third Party Respondent C. Ron Patton, Jr.'s Submission Agreement signed on November 17, 1995.

The Third Party Respondent C. Ron Patton did not file a Statement of Answer to the Third Party Claim as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: November 17, 1995 - 2 Sessions

Hearing Location: NASD offices located in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that on April 2, 1992, Patton, then a broker at Chatfield Dean, called Griffin several times regarding an investment opportunity for Griffin and in an attempt to induce Griffin to purchase shares of Royce Laboratories (hereinafter "Royce"), Patton told Griffin that Royce had final approval from the Food & Drug Administration ("FDA") to manufacture the drug Piroxicam.

Claimant further alleged Patton also told Griffin that the drug had been manufactured by Royce in millions of units and that it was addressed, labeled and sitting in a warehouse ready to be shipped on April 6, 1992 and on that date, according to Patton, the patent for Feldene, for which Piroxicam was a generic equivalent, was to expire. Claimant further alleged Patton repeated those statements to Griffin several times on April 2, 1992 and again on April 3, 1992 and Patton also told Griffin that he should mortgage his house and use the proceeds to purchase shares of Royce because "nothing could go wrong" and when Griffin asked Patton "what is the worst case scenario," Patton replied "nothing could go wrong".

Claimant next alleged Patton's supervisor, Elswick, also spoke with Griffin on April 2, 1992 and during the conversation Elswick also indicated that the FDA had given Royce final approval to make Piroxicam and that the drug was ready for shipment on April 6, 1992 upon expiration of the patent for Feldene.

Claimant next alleged in reliance upon Patton and Elswick's assurances he purchased 1500 shares of Royce at 9,318.75 per share.

Claimant next alleged in further reliance upon the statements of Patton and Elswick regarding the FDA's final approval of Piroxicam, on April 3, 1992, Griffin purchased an additional 500 shares of Royce at \$ 9.778 per share totalling \$4,889.00.

Claimant alleged that the company only had tentative approval to manufacture Piroxicam and had he known this information he would not have purchased any shares in Royce and Respondent Patton and Elswick failed to adequately disclose the risks associated with the securities sold to Griffin and violated numerous common and statutory laws as well as the NASD Rules of Fair Practice.

Claimant next alleged that the Respondent Chatfield Dean & Company Inc. breached the fiduciary duties owed to the Claimant; breached the contract with claimant; and engaged in statutory and common law fraud.

Respondent Chatfield Dean & Co. Inc. maintained Royce is a small manufacturer of generic drugs and on or about September 1991, it had obtained tentative approval from the FDA to manufacture Piroxicam, a popular anti-inflammatory drug, and it expected to receive final approval on April 6, 1992, when Pfizer's patent for the drug expired. Respondent further maintained since Royce at that time was the only drug company which had obtained tentative approval to manufacture Piroxicam, it had an advantage over competitors, and its stock was in high demand and unfortunately, the FDA failed to grant final approval, and the stock's value declined and the stock now is rebounding again.

Respondent Chatfield Dean denied that it, or its agents, made false representations concerning the status of the Piroxicam approval by the FDA and it was made clear to all customers, including Griffin, that approval was tentative and not final and Griffin, like many other investors, took his chances and should live with the consequences.

Respondent Chatfield Dean asserted the following as affirmative defenses:

1. Griffin has failed to state a claim which would entitle him to relief;
2. One or more statutes of limitations bars the claim;
3. Waiver, estoppel and laches bar the claim; and,
4. Griffin has failed to mitigate his damages, if any.

Respondent Chatfield Dean further maintained by the time the Claimant paid for his purchase, he knew the approval was "tentative" and he was hoping the investment would turn around and he knew what he was investing in and he had a duty to read the information that was sent to him stating the approval was "tentative". Respondent Chatfield Dean further maintained the Claimant is not entitled to punitive damages or attorney's fees.

Respondent Chatfield Dean & Co., Inc. asserted a Third-Party Claim against C. Ron Patton, Jr. (a/k/a Clarence Ronald Patton, Jr.) alleging C. Ron Patton was associated with Chatfield Dean from about November, 1991 to June 5, 1992 and on about October 14, 1991, Patton executed an Agreement of Employment with Chatfield Dean and the Agreement required Patton to transact securities business in strict conformance with all applicable statutes, rules and regulations of any governmental entity, agency or self-regulatory body and the Agreement further obligated Patton to follow Company Policy and procedures in doing business. Respondent Chatfield Dean next maintained Patton agreed to indemnify Chatfield Dean for any expenses, costs, loss or damages suffered by the Company by reason of any acts or omissions on the part of Patton, including, but not limited to, violations of regulatory or compliance procedures or customer complaints.

Respondent Chatfield Dean next maintained if Chatfield Dean is held liable to Claimant, O.D. Griffin, then the arbitrators should order Patton to reimburse them for all damages, costs and expenses incurred in the arbitration.

Respondent Patton maintained the culprit in the situation is Royce and next maintained the Claimant invested blindly. Respondent Patton further maintained that he was sorry the situation worked out the way that it did but maintained he did not act in an inappropriate manner.

RELIEF REQUESTED

Claimant O. D. Griffin requested compensatory damages in the sum of \$14,412.13 plus interest in the sum of \$2,278.95 plus attorneys' fees in the sum of \$18,007.14 plus costs in the sum of \$729.14 plus punitive damages in the sum of \$100,000.00.

Respondent Chatfield Dean & Co. Inc. requested a dismissal of all claims against them and that they be awarded their costs, including attorneys' fees, incurred in defending the claim. Respondent Chatfield Dean further requested that if Chatfield is held liable to the Claimant, that the arbitrators order Patton to reimburse them for all damages, costs, and expenses incurred in the arbitration.

Third Party Respondent Patton requested a dismissal of all claims against him.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant asserted a Motion to Preclude Respondent Chatfield Dean from presenting any facts and defenses at the arbitration and to compel Chatfield Dean to respond to the First and Second Requests of Claimant for Production of Documents and Information. The panel denied the Motion but stated that the Respondent Chatfield Dean's failure to timely file an Answer and Respond to the Claimant's Request for Documents and Information would be taken into account during their deliberation on the award of attorneys' fees and forum fees.

The Respondent Chatfield Dean made a Motion to Preclude the Witness Fred Miller from testifying at the hearing for Claimant's failure to Comply with Section 32(c) of the Code of Arbitration Procedure. The arbitration panel denied the Motion but ruled that the Claimant's failure to provide Respondent Chatfield Dean with the identity of the witness would be considered when determining the weight to be given to the testimony of Mr. Miller.

AWARD

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

1. At the hearing the Respondent Chatfield Dean withdrew the Third Party Claim against Third Party Respondent Patton.
2. The Respondent Chatfield Dean be and hereby is liable and shall pay to the Claimant the sum of \$3,210.00, inclusive of prejudgment interest.
3. The Claimant's request for punitive damages is denied.
4. The Respondent Chatfield Dean be and hereby is liable and shall pay to the Claimant the sum of \$500.00 representing a portion of the attorneys' fees for the Respondent Chatfield Dean's failure to timely file a Statement of Answer.
5. The Respondent Chatfield Dean be and hereby is liable and shall pay the Claimant the sum of \$520.00 representing the claim filing fee and hearing session deposit previously paid by the Claimant to the NASD.

FORUM FEES

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

Claim filing fee:	\$200.00
Hearing session deposit:	2 Sessions X \$750.00 = \$1,500.00
Total fees:	\$1,700.00

The undersigned arbitrators have determined that the Respondent Chatfield Dean shall bear the cost of arbitration.

1. The Respondent Chatfield Dean is assessed the sum of \$1,700.00. The Claimant previously paid \$520.00 and the Respondent Chatfield Dean owes a balance of \$1,180.00.

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

Concurring Arbitrators' Signatures
Name

Robert N. Leitch
Robert N. Leitch

Public/Industry

12/2/95
Public

Harriet H. Harris, Esq.
Harriet H. Harris, Esq.

12/23/95
Public

Alex J. Moore
Alex J. Moore

12/27/95
Industry

Date of Decision: January 4, 1996

RECIPIENTS:

Robert N. Leitch