

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Lawrence A. DeMaio

95-01671

Name of Respondents

Investors Associates Inc.  
David J. Britton

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REPRESENTATION

For Claimant Lawrence A. DeMaio ("Claimant"): Susan N. Perkins,  
Attorney at Law, New York, New York

For Respondent Investors Associates Inc. ("Investors Associates"):  
Lawrence R. Gelber, Esq. of the law firm of Beigel Schy Lasky  
Rifkind Fertik & Gelber, New York, New York

David J. Britton ("Britton") represented himself.

CASE INFORMATION

Statement of Claim filed: April 4, 1995  
Claimant's Submission Agreement signed on: March 27, 1995

Statement of Answer and Motion to Dismiss filed by Investors  
Associates on: May 2, 1995  
Investors Associates' Submission Agreement signed on: May 23, 1995

Britton's Statement of Answer was filed on: August 15, 1995  
Britton did not sign a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: August 15, 1995 - one session

Hearing Dates/Sessions: August 25, 1995 - two sessions  
August 28, 1995 - two sessions  
August 29, 1995 - two sessions  
August 30, 1995 - three sessions  
August 31, 1995 - two sessions

Hearing Location: NASD District Office, Philadelphia, PA

CASE SUMMARY

Claimant, among other things, alleged that his investment objective was long term growth. Claimant alleged that Respondents induced Claimant to invest in low capital speculative stocks which did not satisfy Claimant's stated investment objective. Claimant alleged that the stocks Respondents recommended to Claimant were unsuitable. Claimant alleged the following causes of action: misrepresentation, churning and unauthorized trading and omission of material facts in violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder; offer and sale of securities by communications containing untrue statements and omission of material facts in violation of Section 12(2) of the Securities Act; market manipulation; common law fraud; breach of fiduciary duty; and breach of contract.

Respondents categorically denied all allegations of wrongdoing and specifically maintained, among other things, that Claimant exercised control over his account and traded in the stocks recommended by Respondents only after carefully considering the investments recommended to him by Britton. Respondents maintained that Claimant was fully informed about the investments and was aware of the risks and rewards associated with each investment. Respondents maintained that all investments were suitable for Claimant and that there were neither material misrepresentation nor omissions of material facts. Respondents maintained the following affirmative defenses: Claimant has failed to state a claim upon which relief can be granted; they properly executed Claimant's orders; Claimant assumed the risks; Claimant failed to mitigate his damages; Claimant ratified each transaction; Respondents acted in good faith; waiver and estoppel.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$164,014.45, punitive damages, interest, attorney's fees, costs and disbursements.

Respondents requested that Claimant's claim be dismissed in its entirety. Respondent Investors Associates requested that it be awarded costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$25,000.

OTHER ISSUES CONSIDERED & DECIDED

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.

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That Investors Associates' Motion to Dismiss was denied. That Claimant's Motion for Sanctions was denied.

The Panel determined that although Britton did not execute a submission agreement, that pursuant to Section 12(a) of the Code of Arbitration Procedure, the Panel exercised its jurisdiction over Britton.

#### 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. That Respondent Investors Associates is liable to the Claimant and shall pay to the Claimant the sum of \$7,066.55; inclusive of pre judgment interest.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That the parties shall bear their respective expenses, including attorney's fees except as stated below.
4. That Claimant's claim against Respondent Britton is denied in its entirety.
5. Any and all claims not specifically addressed are denied in their entirety.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 pre hearing conference x \$300 = \$300  
11 hearing sessions X \$750 = \$8,250 plus \$300 pre hearing conference = net \$8,550 due.

Forum Fees Assessed Against: Claimant and Respondent Investors Associates equally. Claimant is assessed forum fees in the amount of \$4,125, however, Claimant is entitled to offset this amount with his hearing session deposit of \$750 previously filed so that the amount due from Claimant is \$3,375. Investors Associates is assessed forum fees in the amount of \$4,125.

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

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By The Arbitration Panel:

Dated:

9-21-95

Joseph F. Keener, Jr.  
Joseph F. Keener, Jr., Presiding  
Public Arbitrator

Jill Leeds-Rivera  
Jill Leeds-Rivera  
Public Arbitrator

Gordon E. Wright  
Gordon E. Wright  
Industry Arbitrator

Date Award Served By the NASD:

September 26, 1995

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By The Arbitration Panel:

Dated: .

9/22/95

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Joseph F. Keener, Jr., Presiding  
Public Arbitrator

Jill Leeds-Rivera  
Jill Leeds-Rivera  
Public Arbitrator

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Gordon E. Wright  
Industry Arbitrator

Date Award Served By the NASD:

September 26, 1995

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Case Number 95-01671  
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By The Arbitration Panel:

Dated: ..

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Joseph F. Keener, Jr., Presiding  
Public Arbitrator

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Jill Leeds-Rivera  
Public Arbitrator

9/23/95

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Gordon E. Wright  
Gordon E. Wright  
Industry Arbitrator

Date Award Served By the NASD:

September 26, 1995