

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jerome Spevack

Case Number 95-02100

Name of Respondents

Cartwright & Walker Securities, Inc.
Scoville Walker

REPRESENTATION

For Claimant Jerome Spevack (hereinafter referred to as "claimant") appeared Anthony J. Hom, Esq., Philadelphia, Pennsylvania.

Respondent Cartwright & Walker Securities, Inc. and respondent Scoville Walker did not appear in this matter.

CASE INFORMATION

The Statement of Claim was filed on April 26, 1995. Claimant's Submission Agreement was signed on February 22, 1995.

Respondent Cartwright & Walker Securities, Inc. and Scoville Walker did not file and did not file Submission Agreements or Statements of Answer.

HEARING INFORMATION

Hearing Dates/Sessions:

December 21, 1995

One Session

The hearing was held at the NASD, Inc.'s offices located in New York City, New York.

CASE SUMMARY

On February 2, 1994, claimant allegedly opened an account with respondents as a result of a cold-call in which claimant was allegedly induced to purchase 1000 shares of Telefonica de Argentina ("TDA") at \$8 per share. Further, on February 8, 1994, claimant was allegedly induced to purchase an additional 500 shares of TDA after being advised that the price of the stock had already gone over \$9 per share but that a customer who had previously purchased 500 shares at \$8 was unable to complete the transaction and, therefore, claimant could purchase those shares for \$8 per share.

Thereafter, on March 15, 1994, claimant was allegedly advised that TDA was having difficulties and that claimant should sell his stock before it went down in value and in its place claimant should purchase Metro Wireless Interactive Corporation ("Metro Wireless") which respondents expected would appreciate rapidly. Claimant was allegedly assured that the transaction would be done on an "even exchange". It was not until claimant received his account statement that he realized a shortfall had occurred in his account. Respondents allegedly requested that claimant rectify the shortfall in his account but claimant refused. Claimant later received a statement which reported that 257 shares of Metro Wireless had been sold at 6 1/2 to rectify the shortfall in the account and a statement indicating that the account was closed and funds of \$10,075.00 transferred to a California bank.

Claimant allegedly demanded that the 257 shares of Metro Wireless be returned to his account without charge and, after several months, claimant did receive a statement confirming cancellation of the sale of 257 shares of Metro Wireless and restoration of 2000 shares of Metro Wireless to his account. However, the statement also showed the price of Metro Wireless at \$4.75 a share.

The value of Metro Wireless further declined to \$4 per share as reported on claimant's statement of September 30, 1994. Claimant also received a statement of December 30, 1994 which reported a 1 for 25 reverse split whereby claimant's account now had only 80 new shares of Metro Wireless valued at \$5 per share. Claimant alleged that the bid for Metro Wireless was \$2 at the time of the filing of this claim.

Claimant alleged that he was damaged as a result of respondents fraudulent, unlawful and improper conduct including recommendations of unsuitable trades, fraudulent misrepresentation and omissions and unauthorized trading. Claimant also alleged that Cartwright & Walker Securities, Inc. violated the duties and standards it owed to claimant by failing to establish and implement appropriate supervisory procedures and by failing to review the investments recommended and directed by claimant by respondent Walker.

Respondents Cartwright & Walker Securities, Inc. and Scoville Walker did not file answers to the statement of claim.

RELIEF REQUESTED

Claimant requested an award to recover \$12,275.00 in compensatory damages plus interest from the date the losses were incurred to the date of the arbitration hearing, plus attorneys fees, costs, and any other damages the panel may deem just and fair.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator made the following rulings as to Respondents Cartwright & Walker Securities, Inc. and Scoville Walker who failed to file and present a statement of answer and properly executed Submission of the dispute to NASD Arbitration (i.e. Submission Agreement) and failed to appear at the New York Evidentiary hearing conducted in this matter without obtaining any adjournment/postponement thereof:

- (1) Pursuant to section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy.
- (2) The panel found that Scoville Walker was a person associated with an NASD member firm, namely Cartwright & Walker Securities, Inc., at the time this controversy arise. Consequently, the panel found personal jurisdiction over Scoville Walker and Cartwright & Walker Securities, Inc. pursuant to Section 12 (a) of the Code. Additionally, Scoville Walker executed a Form U-4 requiring him to arbitrate at this forum upon demand of the customer claimant.
- (3) In view of (2) above, Scoville Walker and Cartwright & Walker Securities, Inc. were required to execute and file with the NASD a submission agreement and answer pursuant to Section 24 (b) of the Code. In this regard, the panel found that the NASD had properly served the claimant's claim upon Scoville Walker and Cartwright & Walker Securities, Inc. pursuant to Section 25 (a) of the Code.
- (4) Finally, the panel found that the NASD, pursuant to Sections 21, 26 and 29 of the Code, provided the respondents with "due notice" of the hearing to be conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Scoville Walker and Cartwright & Walker Securities, Inc. whose absence was, as stated previously, unexcused.

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) Respondents Scoville Walker and Cartwright & Walker Securities, Inc. be and hereby are jointly and severally liable and shall pay to the claimant the sum of \$12,275.00, interest specifically excluded.
- (2) Claimant's claim for attorney's fees be and hereby is denied.
- (3) Claimant's claim for costs and any other damages be and hereby are denied.
- (4) All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain \$300.00 hearing session deposit previously deposited by the claimant with the NASD.

Arbitrator's Signature:



Martin Jay Siegel, Esq.

I, Martin Jay Siegel, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Martin Jay Siegel, Esq.

Date of Decision: