

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Garrick A. Gustafson

95-02891

Names of Respondents

Alexander Jones
Anthony Hammond
Vadim Mostovoy
Baraban Securities, Inc.
Tamaron Investments, Inc.
Thomas Russell Curtis
Charles F. Kirby

REPRESENTATION

Claimant Garrick A. Gustafson ("Gustafson") was represented by Jeff Dennis Ferentz, Esq. of Jeff Dennis Ferentz, Inc., Newport Beach, California. By letter dated January 15, 1998 Mr. Ferentz advised NASD Regulation, Inc. that he withdrew as counsel for Claimant and thereafter, Claimant appeared pro se.

Respondent Alexander Jones ("Jones") appeared pro se.

Respondent Anthony Hammond ("Hammond") appeared pro se.

Respondent Vadim Mostovoy ("Mostovoy") was represented by Sanford S. Kantor, Esq. of Kantor and Kantor, New York, New York. By letter dated February 5, 1998 Mr. Kantor advised NASD Regulation, Inc. that he withdrew as counsel for Mostovoy and thereafter, Respondent Mostovoy appeared pro se.

For Respondent Baraban Securities, Inc. ("Baraban"): Robert A. Uhl, Esq., Beverly Hills, CA.

For Respondents Tamaron Investments, Inc. ("Tamaron"), Thomas Russell Curtis ("Curtis") and Charles F. Kirby ("Kirby"): Frank W. Visciano, Esq. of Senn Lewis Visciano & Strahle, Denver, CO.

CASE INFORMATION

Statement of Claim filed: June 7, 1995.

Claimant's Submission Agreement signed: June 7, 1995.

Statement of Answer filed by Respondent Jones: July 14, 1995.

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Submission Agreement signed by Respondent Jones: August 18, 1995.

Respondent Hammond did not file a Statement of Answer or Submission Agreement.

Statement of Answer filed by Respondent Mostovoy: August 29, 1995.

Submission Agreement signed by Respondent Mostovoy: August 29, 1995.

Statement of Answer and Cross-Claim filed by Respondent Baraban: August 29, 1995.

Respondent Baraban's Submission Agreement/Corporate Acknowledgment signed: August 28, 1995 by Stuart S. Greenberg on behalf of Baraban.

Joint Statement of Answer filed by Respondents Tamaron, Curtis and Kirby: January 5, 1995.

Respondents Tamaron, Curtis and Kirby did not file executed Submission Agreements.

HEARING INFORMATION

On February 24, 1997 and March 31, 1997 the arbitration panel conducted telephonic pre-hearing conferences lasting two (2) sessions.

On February 10, 1998 a hearing lasting one (1) session was conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that his claims against the Respondents involved misrepresentation, conflicts in serving Claimant, suitability of recommendations and lax brokerage business practices. Claimant further alleged that Respondent Hammond misrepresented himself as "A. Jones" to at least several clients and, hence, was removed from serving those clients when A. Jones left Tamaron. Claimant next alleged that it was unclear whether Tamaron, an IPO underwriter, was protecting its IPO clients or its brokerage customers in recommending stocks for purchase. Claimant next alleged that Tamaron promoted AMEX listed IPO stocks as being significantly less risky than they actually were and that Tamaron's office was very lax in enforcing ethical business practices or discouraging illegal business practices among its brokers even when such practices were brought to the attention of the owner Curtis.

Respondent Jones denied the allegations of wrongdoing contained in Claimant's Statement of Claim and alleged that although his name appeared on Claimant's written account statements he never spoke with Claimant while he was associated with Respondent Tamaron and that he did not speak with Claimant or give Claimant any investment recommendations after he left Tamaron. Jones further alleged that someone at Tamaron fraudulently misrepresented himself to be him (Jones) because a telephone conversation referenced by Claimant in the Statement of Claim and purported to have taken place with Jones, took place at least eight months after Jones left Tamaron. Respondent Jones maintained that he never had any contact with Claimant while he was employed by Tamaron or at any other time after he left Tamaron.

Respondent Hammond did not file a Statement of Answer.

Respondent Mostovoy denied all allegations of wrongdoing contained in Claimant's claim and alleged that (a) he was informed that the stock at issue was suitable for the Claimant who had previously dealt with the stock and that the Claimant indicated a desire for and familiarity with speculative stocks and was approved for margin transactions and options; (b) that all recommendations made to the Claimant

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concerning the transactions involving Mostovoy were based upon public information and materials supplied by his supervisor and the management of Tamaron. Mostovoy further alleged that after he left the employ of Tamaron he spoke to the Claimant and strongly recommended that he sell his holdings in Beta Well and Conversion Industries. Respondent Mostovoy maintained that he acted properly and in good faith with regard to the Claimant's account.

Respondent Baraban denied the allegations of wrongdoing contained in the Statement of Claim and asserted that the Claimant did not maintain any securities accounts at Baraban during the period in which Claimant alleged transactions, violations and losses in his account. Respondent Baraban further asserted a cross-claim against Respondent Tamaron for indemnification alleging that all of the transactions, violations and losses alleged by Claimant occurred while Claimant maintained an account at Tamaron. Respondent Baraban further alleged that Respondents Jones, Hammond and Mostovoy were not associated with Baraban during the period in which Claimant alleged the transactions at issue occurred.

Respondents Tamaron, Curtis and Kirby denied the allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant is an experienced investor with a background in stocks and bonds as represented by the disclosures contained in the Statement of Claim and any amendments thereto; that any and all investment properties presented to the Claimant were done at the request of the Claimant and were within the stated investment goals of the Claimant; that all actions taken, whether by Tamaron, its agents, representatives, employees or associates were done at the direction of and under the control of the Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages against Respondents, jointly and severally, in the amount of \$102,000.00, pre-judgment and post-judgment interest at the maximum rate allowed by law, costs of this arbitration, expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable by the panel. Claimant further requested that disciplinary referrals be made against all of the Respondents.

Respondents Jones and Mostovoy requested a dismissal of the claim.

Respondent Baraban requested dismissal of the claim as well as relief on its cross-claim.

Respondents Tamaron, Curtis and Kirby requested a dismissal of all claims against them.

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 NASD Regulation, Inc.

By letter dated November 12, 1997 signed by Montgomery G. Griffin, Esq. of Jeff Dennis Ferentz, Inc., NASD Regulation, Inc. was advised that the Claimant had entered into a settlement agreement with Respondent Baraban.

On September 18, 1997 NASD Regulation, Inc. received a notice of involuntary bankruptcy which was filed against Tamaron on August 11, 1997, in the U.S. Bankruptcy Court, District of Colorado. Additionally, by letter dated December 15, 1997, signed by Jeff Dennis Ferentz, Esq., NASD Regulation, Inc. was advised that the Claimant had agreed to dismiss all claims against Respondents Tamaron, Kirby and Curtis, with prejudice.

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In view of the above, the arbitration hearing proceeded with respect to the claims of the Claimant against the remaining Respondents Jones, Hammond and Mostovoy.

By agreement of the Claimant and the approval of the panel Respondent Mostovoy attended the hearing via telephone conference call.

Respondents Jones and Hammond did not attend the hearing.

Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that Respondents Jones and Hammond were persons associated with an NASD member firm at the time this controversy arose. Consequently, the arbitration panel found personal jurisdiction over both Jones and Hammond pursuant to Rule 10301 of the Code. In view of the above the arbitration panel found that Respondent Hammond was required to file with NASD Regulation, Inc. a Statement of Answer and properly executed Submission Agreement pursuant to Rule 10314(b) of the Code which Hammond failed to do.

In addition, in accordance with Rules 10301, 10315 and 10318 of the Code, the arbitration panel found that NASD Regulation, Inc. provided Respondents Jones and Hammond with "due notice" of the hearing conducted in this matter. The arbitration panel, therefore, determined to proceed with the hearing without Respondents Jones and Hammond present.

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. Respondents Jones, Hammond and Mostovoy are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for costs and expenses including reasonable consulting fees and expert witness fees are hereby denied.
3. All other claims including Claimant's request that disciplinary referrals be made against the Respondents are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code the arbitration panel has assessed forum fees in the amount of \$1,500.00 (two (2) pre-hearing conferences (panel) x \$500.00 + one (1) hearing session x \$500.00).

1. The Claimant is hereby assessed forum fees in the amount of \$500.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimant in full satisfaction thereof.
2. Respondents Jones and Hammond are hereby assessed forum fees, jointly and severally, in the amount of \$1,000.00 payable to NASD Regulation, Inc.
3. NASD Regulation, Inc. shall retain the claim filing fee of \$150.00 paid by the Claimant.
4. NASD Regulation, Inc. shall retain the member surcharge of \$300.00 paid by Respondent Baraban pursuant to Rule 10333 of the Code.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
Nancy J. Cliff, Esq.

Public/Chairperson

/s/
Beverly B. Kennedy

Industry/Panelist

/s/
Mark J. Berkowitz, Esq.

Public/Panelist

Date of Decision: March 3, 1998