

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration between)	
)	
DONALD B. HILL and UELDEAN L. HILL;)	
JOHN C. HILL and JERRI A. HILL; and)	
BRUCE A. HILL and ANNE C. HILL,)	
)	
Claimants,)	
)	
vs.)	CASE NO. 95-03105
)	
S.C. COSTA COMPANY, INC., and STEVEN)	
FRITZ,)	
)	
Respondents.)	

REPRESENTATION

For Claimants: Clell I. Cunningham III, Esq. and Sheldon B. Swan, Esq. of Dunn Swan & Cunningham, Oklahoma City, OK

For Respondents: P. David Newsome, Jr., Esq. of Conner & Winters, Tulsa, OK.

CASE INFORMATION

Claimants' Statement of Claim filed: June 21, 1995.

Respondents' joint Answer filed: August 24, 1995.

Submission Agreements signed:

- Donald Hill on June 16, 1995.
- Ueldean L. Hill on June 16, 1995.
- Bruce Hill on June 16, 1995.
- Anne C. Hill on June 16, 1995.
- John C. Hill on June 19, 1995.
- Jerri A. Hill on June 19, 1997.
- Steven L. Fritz on September 5, 1995.
- S.C. Costa Company, Inc. by Steve Costa, President, on September 5, 1995.

HEARING INFORMATION

Pre-Hearing Conference(s): None held.

Hearing Date(s): March 19, 1997 for two (2) sessions; and
March 20, 1997 for one (1) session.

Hearing Location: Oklahoma City, OK.

CASE SUMMARY

Claimant, Bruce Hill, alleged that he, in the course of his business as a life insurance sales representative, acquired shares of Life USA Holdings, Inc. ("LUSA"). Bruce Hill in 1990 and 1991 sold some of his shares, at cost, to his parents, Claimants Donald and Ueldean Hill, and to brother and sister-in-law, John and Jerri Hill. In late 1993, Claimants were introduced by Bruce Hill's employer to Respondent Steven Fritz ("Fritz"), who sought to have Claimants retain him as their investment broker. Fritz and Claimants discussed an investment in LUSA stock through the use of a margin account. Claimants did invest through the use of margin accounts at Claimants S.C. Costa Company, Inc. ("S.C. Costa"). Claimants alleged that they were not suitable for such investments given their financial background, investment objectives and prior investment experience.

Claimants asserted the following claims against Respondents: (1) Negligence by S.C. Costa in the employment and supervision of Fritz; (2) Breach of fiduciary duties by S.C. Costa and Fritz; (3) violations of 71 O.S. § 408(a)(2) by S.C. Costa and Fritz (misstatements and omissions); (4) Common Law Fraud by S.C. Costa and Fritz; (5) Breach of Implied Contract by S.C. Costa.

Respondents denied the allegations of unsuitability. Respondents alleged Fritz did not recommend the LUSA investment, that Fritz only carried out the instructions given to him by Claimants, that Fritz explained the operation of a margin account to Claimants and that S.C. Costa was not deficient in its supervision of Fritz. The Respondents alleged that Claimants' prior ownership of LUSA shares, Bruce Hill's status as an insurance agent for LUSA, margin account trading in LUSA by the employer of Bruce Hill and Claimants' desire to increase their investments in LUSA were inconsistent with their allegations of reliance on or recommendations by Fritz.

RELIEF REQUESTED

Claimants requested the entry of judgment against Respondents and for an award of actual damages against Respondents, jointly and severally, as follows:

Donald and Ueldean Hill: \$42,480.12
Bruce and Anne Hill: \$33,496.00
John and Jerri Hill: \$1,811.45

In addition, Claimants sought punitive damages of \$80,000.00, interest at ten percent (10%) per annum from date of purchase, together with costs of the action and such other and further relief that the arbitrators deem fair and equitable.

Respondents requested that the Statement of Claim be dismissed and that they be awarded attorney fees and costs pursuant to 71 O.S. § 408(i), asserting that the Claimants' claims were without substantial merit.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 1, 1996, claimants submitted a motion for a default judgement. Claimants supplemented this motion on or about November 10, 1996. After reviewing the motion, the supplement and all related submissions, the undersigned arbitrators determined that the motion was denied on or about January 22, 1997.

In their closing statement at the hearing, claimants made an oral motion to add Steve Costa as a respondent to this action. After careful consideration, the undersigned arbitrators decided to deny the motion.

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 original remains on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings and hearing the evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination that judgment should be entered in favor of the Respondents and against Claimants as follows:

1. Respondents S.C. Costa Company, Inc. and Steven Fritz are jointly and severally liable for and shall pay to claimants Donald B. Hill and Ueldean L. Hill the sum of \$42,480.12 in actual damages;

2. Respondents S.C. Costa Company, Inc. and Steven Fritz are jointly and severally liable for and shall pay to claimants Bruce A. Hill and Anne C. Hill the amount of \$33,496.00 in actual damages;
3. Respondents S.C. Costa Company, Inc. and Steven Fritz are jointly and severally liable for and shall pay to claimants John C. Hill and Jerri A. Hill the amount of \$1,811.45 in actual damages;
4. Respondents S.C. Costa Company, Inc. and Steven Fritz's Counter-Claim is denied in its entirety and dismissed with prejudice;
5. The parties shall bear their own costs and expenses including attorneys' fees with the exception of forum fees which are specifically addressed below; and
6. Any relief not specifically granted herein is denied in its entirety.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were three (3) hearing sessions x \$750 = \$2,250.00 in forum fees. Pursuant to §10332 of the 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 hours or less.

Pursuant to §10322(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution will retain the non-refundable filing fee in the amount of \$250.00 and will retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited by the claimants.

In accordance with §10332(c) of the Code, respondents S.C. Costa Company, Inc. and Steven Fritz are jointly and severally liable for and shall pay to claimants Donald B. Hill, Ueldean L. Hill, John C. Hill, Jerri A. Hill, Bruce A. Hill and Anne C. Hill the sum of \$950.00 as reimbursement of the filing fee and hearing session deposit. Respondents S.C. Costa Company, Inc. and Steven Fritz are also liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500.00 in additional forum fees.

Pursuant to §10333 of the Code, respondent S.C. Costa Company, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the amount of \$350.00 for the member surcharge.

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NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$1,750.00 in postponement fees previously paid by respondents S.C. Costa Company, Inc. and Steven Fritz.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Signed:

Dated:

Kelley L. Cornelius, Esq.
Kelley L. Cornelius, Esq.
Public Arbitrator
Chairman

April 11, 1997

Robert N. Naifeh, Esq.
Robert N. Naifeh, Esq.
Public Arbitrator
Panelist

April 11, 1997

Michael R. Prescott, Esq.
Michael R. Prescott, Esq.
Industry Arbitrator
Panelist

April 11, 1997

Date Award served by the NASD: April 11, 1997