

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Patrick Arella

Claimant,

v.

No. 95-03430

South Richmond Securities, Inc. and
John T. McMahon

Respondents.

REPRESENTATION OF PARTIES

Claimant Patrick Arella ("Claimant") was represented by Jeffrey D. Kangas, Esq. of Livonia, Michigan.

Respondent John T. McMahon ("McMahon") was represented by David Crystal, II, Esq. of Gilbride, Tusa, Last & Spellane located in New York, New York.

Respondent South Richmond Securities, Inc. ("South Richmond") did not appear at the hearing and was unrepresented.

CASE INFORMATION

The Statement of Claim was filed on or about July 13, 1995. Claimant's Submission Agreement was signed on July 7, 1995.

NASD Regulation, Inc. has no record that Respondent McMahon filed a formal Statement of Answer or a properly executed Submission Agreement.

Respondent McMahon's Motion to Dismiss based on ineligibility was filed on or about August 23, 1995. Claimant's Response to the Motion to Dismiss was filed on or about September 12, 1995. Claimant's post-hearing brief in Response to the Motion to Dismiss based on ineligibility was filed on or about February 1, 1997.

Respondent McMahon's Motion to Dismiss based on Claimant's failure to comply with the arbitrator's order was filed on or about January 6, 1997. Claimant's Response to Respondent McMahon's Motion to Dismiss based on Claimant's failure to comply with the arbitrator's order was filed on or about January 9, 1997. Respondent McMahon's Reply was filed on or about January 9, 1997.

NASD Regulation, Inc. has no record that Respondent South Richmond filed a Statement of Answer or properly executed Submission Agreement.

HEARING INFORMATION

The hearing was held on January 22, 1997 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant Patrick Arella alleged that in July of 1989 Claimant was contacted by Respondent John T. McMahon on behalf of Respondent South Richmond Securities, Inc. Claimant contended that Respondent McMahon told Claimant that he should buy Medphone stock because McMahon expected the stock's price to reach \$10.00 per share by the end of the year. Claimant asserted that, based on McMahon's representations, Claimant purchased 2,000 shares of Medphone at \$5.00 per share for a total investment of \$10,000. Claimant contended that McMahon made no attempt to obtain information regarding Claimant's financial status or investment objectives. Claimant stated that McMahon promised to monitor the stock's performance and advise Claimant when it came time to sell. Claimant maintained that McMahon never advised Claimant to sell and that the stock was completely worthless by the end of 1994. Claimant alleged that somewhere in the latter half of 1991 Claimant received three curious statements which showed that Claimant purportedly sold shares in Legend Foods stock and Medphone stock. Claimant contended that he never owned shares in either Legend foods or purchased additional shares in Medphone. Claimant asserted that he believed that someone from South Richmond was trading on his account. Claimant contended that Respondent South Richmond failed to supervise its representative, that Respondents made no effort to ascertain Claimant's financial status or investment objectives, made unsuitable recommendations, made fraudulent misrepresentations and neglected Claimant's account causing the loss of the entire account.

Respondent McMahon alleged that all claims were ineligible for arbitration pursuant to Section 15 of the NASD Code of Arbitration Procedure. Respondent McMahon contended that the single purchase at issue was made on July 7, 1989, more than six years prior to the filing of the

Statement of Claim. Respondent McMahon asserted that all claims made by Claimant are barred by the Section 15 eligibility provision.

NASD Regulation has no record Respondent South Richmond filed any responsive pleading in this matter.

RELIEF REQUESTED

Claimant requested an arbitration award in the amount of \$10,000.00 together with costs, interest and attorney fees. Claimant also requested punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety and reimbursement for the costs and attorney fees he has incurred in defending this action, and such other relief deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

NASD Regulation, Inc. Office of Dispute Resolution issued a preliminary determination with respect to Respondent McMahon's Eligibility Motion. The Motion was preliminarily denied. The parties and arbitrator were advised that this preliminary determination was subject to *de novo* review by the arbitrator, and that the arbitrator was to give no weight to this preliminary determination.

Respondent McMahon's Motion to Dismiss based on Claimant's failure to comply with the arbitrator's order was denied.

NASD Regulation, Inc. Office of Dispute Resolution was unable to locate Respondent South Richmond Securities, Inc. Upon review of the file the undersigned arbitrator has determined that Respondent South Richmond Securities, Inc. has not been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondent South Richmond Securities, Inc. has not received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would not proceed with respect South Richmond Securities, Inc. pursuant to §10318 of the Code.

Respondent John T. McMahon did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration

pursuant to §10301 of the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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) That Respondent John T. McMahon's Motion to Dismiss based on ineligibility is hereby denied;
- (2) That Respondent John T. McMahon is liable for and shall pay to Claimant Patrick Arella compensatory damages in the amount of Seven Thousand Two Hundred and Sixty Dollars and No Cents (\$7,260.00); and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing session x \$200 = \$400 in forum fees. Pursuant to §10332(b) of 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 (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$75 and shall retain as forum fees the hearing session deposit in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Respondent John T. McMahon is liable for and shall pay forum fees in the amount of \$200.

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Respondent South Richmond Securities, Inc. is assessed and shall pay its Member Surcharge in the amount of \$200.

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

Arbitrator's Signature



Francis C. Flood, Esq.
Chairperson
Public Arbitrator

2/20/97

Dated:

For NASD use only:

Date award served on the parties:

FEBRUARY 21, 1997