

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

James D. and Anne E. Belt

95-03439

Name of Respondents

Charles R. Varneke, Jr.
J. Gregory & Company, Inc.
Nicholas Salerno

REPRESENTATION

For Claimants: Richard Groner, Esq. of the Law Offices of Groner, Schieb & Currie, Sarasota, FL.

For Respondent Charles R. Varneke, Jr.: William Kline, Esq., Sarasota, FL.

For Respondent J. Gregory & Company, Inc.: Dianne A. Borden of J. Gregory & Company, Inc., Great Neck, NY.

Respondent Nicholas Salerno appeared pro se.

CASE INFORMATION

Statement of Claim filed: July 18 1995.

Claimants' Submission Agreement signed on: July 11, 1995.

Statement of Answer filed by Charles R. Varneke, Jr. on: October 29, 1996.

Respondent Charles R. Varneke, Jr. did not execute a Submission Agreement.

Respondents J. Gregory & Company, Inc. and Nicholas Salerno did not file Statements of Answer or executed Submission Agreements (see "Other Issues").

HEARING INFORMATION

On April 22, 1996, March 3, 1998 and March 4, 1998 hearings lasting five sessions were conducted in Tampa, FL.

CASE SUMMARY

Claimants James and Ann Belt alleged the following: that they are retired school teachers who are

financially unsophisticated; that throughout the course of their lives they were able to accumulate modest savings; that they entrusted \$75,000.00 of these savings to the Respondent Charles Varneke, Jr.; that after an unsolicited telephone call, Respondent Charles Varneke, Jr. came to the Belts' house; that his business card proclaimed he was a "Senior Portfolio Investment Advisor" within the financial industry, and further, he claimed that he possessed certain expertise in 15 particular securities; that in reality, he was not an expert in any particular security; that these initial misrepresentations began a pattern of misconduct in which Mr. Varneke never dealt with the Belts honestly or fairly; that despite the fact that the Belts were conservative investors that sought preservation of principal, Mr. Varneke put the entirety of the funds entrusted to him in extremely volatile, risky investments; that in each of the Belts' four accounts, Mr. Varneke placed their funds in 100% low-priced speculative investments; that Mr. Varneke admittedly never disclosed the risk and actual expected return associated with the investments he solicited and sold to the Belts; that he willfully represented that all of the investments he sold were safe, conservative, and prosperous, when in fact he knew they were not; that he perpetuated a fraud on the Belts; and that within less than 7 months of transacting with Mr. Varneke, the Belts had lost almost everything they had entrusted to him.

Claimants specifically alleged claims of fraud, breach of fiduciary duty and misrepresentation.

Respondent Varneke denied all of the allegations raised in the Statement of Claim and asserted that the Claimants were educated investors who directed every investment decision made in their account.

RELIEF REQUESTED

Claimants requested relief as follows: \$70,418.34 in out of pocket losses; \$19,717.12 in statutory interest; entitlement to prevailing party's attorney's fees under Chapter 517 of the Florida Statutes; an assessment of all forum and filing fees against Respondent Varneke; and, at least \$1.00 in punitive damages against Varneke given the blatant egregious nature of his misconduct.

Respondent Varneke requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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 present at the hearing agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

Due to a bankruptcy filing on behalf of Respondent J. Gregory & Company, Inc. all claims against this entity were stayed and the arbitration panel did not reach any determinations with regard to this entity.

Prior to the commencement of the evidentiary hearing, the arbitration panel was informed that the Claimant withdrew, with prejudice, all claims against Respondent Nicholas Salerno.

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. Respondent Charles R. Varneke, Jr. is found liable, and shall pay to the Claimants \$70,418.34 in compensatory damages.

2. Respondent Charles R. Varneke, Jr. is found liable, and shall pay to the Claimants \$19,717.14 in pre-judgment interest.
3. Respondent Charles R. Varneke, Jr. shall pay \$500.00 to Claimants representing reimbursement of the hearing session deposit previously paid by the Claimants.
4. Claimants' requests for punitive damages and attorney's fees are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,500.00 (five hearing sessions with the entire panel x \$500.00).

Respondent Charles R. Varneke, Jr. is hereby assessed \$2,500.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously paid by the Claimants in partial satisfaction thereof leaving a balance due in the sum of \$2,000.00.

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

Concurring Arbitrators' Signatures

| Name | Public/Industry |
|---|-----------------|
| /S/ _____ William J. Capito, Esq. | Public |
| /S/ _____ Albert R. Neville, Jr. | Public |
| /S/ _____ Gerald B. Conley | Public |

Date of Decision: 5/28/98