

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

William Kohler

Claimant,

v.

No. 95-03441

South Richmond Securities, Inc. and
John T. McMahon

Respondents.

REPRESENTATION OF PARTIES

Claimant William Kohler ("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 14, 1995. Claimant's Submission Agreement was signed on July 7, 1995.

NASD Regulation, Inc. has no record that Respondent McMahon filed a Statement of Answer. Respondent McMahon's Submission Agreement was signed on January 21, 1997.

Respondent McMahon's Motion to Dismiss based on ineligibility was filed on or about August 2, 1995. Claimant's Response to the Motion to Dismiss was filed on or about September 5, 1995.

Respondent McMahon's Motion to Dismiss based on Claimant's failure to comply with the arbitrator's order was filed on or about December 9, 1996. 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 December 23, 1996.

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 21, 1997 for one (1) session in Southfield, Michigan.

CASE SUMMARY

Claimant William Kohler alleged that in June 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 1,000 shares of Medphone at \$4.00 per share, an additional 1,000 shares of Medphone at \$5.00 per share, and another 1,000 shares at \$5.50 per share. 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 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 last purchase at issue was made on July 12, 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 that Respondent McMahon or Respondent South Richmond filed a Statement of Answer.

RELIEF REQUESTED

Claimant requested an arbitration award in the amount of \$14,500.00 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 it has incurred in defending this action, and such other relief deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

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.

NASD Regulation, Inc. Office of Dispute Resolution issued a preliminary determination with respect to Respondent McMahon's Eligibility Motion. The Motion was granted, in part, only as to claims made relating to purchases made prior to July 14, 1989. 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.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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 the Statement of Claim is dismissed in its entirety with prejudice;
- (2) That Claimant William Kohler is liable for and shall pay to Respondent John T. McMahon his costs incurred in defending this action in the amount of One Thousand Nine Hundred and Fifty Two Dollars and No Cents (\$1,952.00); 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 \$300 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing session x \$300 = \$300 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 \$100 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

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.

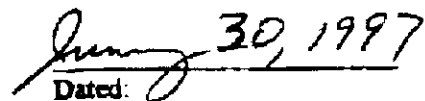
Arbitrator's Signature



Jeffrey M. Bauer, Esq.

Chairperson

Public Arbitrator


Dated:

For NASD use only: January 31, 1997
Date award served on the parties: _____