

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Albert and Gladys Miller

95-03872

Name of Respondent(s)

Michael L. Veit
Dianne A. Borden
Vincent Mongno
J. Gregory & Company, Inc.

REPRESENTATION

For Claimants Albert and Gladys Miller ("the Millers"): Jack H. Halperin, Esq. of the law office of Jack H. Halperin, New York, NY.

For Respondent Michael Veit ("Veit"): John E. Lawlor, Esq. of the law office of John E. Lawlor, Garden City, NY.

Respondents Diane Borden ("Borden") and Vincent Mongno ("Mongno") were pro se.

Respondent J. Gregory & Company, Inc. ("J. Gregory") filed for bankruptcy and was not represented at the arbitration since it was dismissed from this action due to the automatic stay provisions of the United States Bankruptcy Code. (see "Other Issues")

CASE INFORMATION

Statement of Claim filed: August 9, 1995. Claimant's Submission Agreement signed on: July 25, 1995.

Statement of Answer filed by Respondent Veit on: October 10, 1995. Respondent Veit's Submission Agreement signed on: September 28, 1995.

Statement of Answer filed by Respondent Borden on: August 29, 1995. Respondent Borden's Submission Agreement signed on: August 21, 1995.

Statement of Answer filed by Respondent Mongno on: August 23, 1995. Respondent Mongno's Submission Agreement signed on: August 21, 1995.

Respondent J. Gregory failed to file a Submission Agreement or an Answer as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure (see "Other Issues").

HEARING INFORMATION

On June 6, 1996 a prehearing conference was held via telephone conference call with the Chairperson of the arbitration panel.

On January 22 and 23, 1997 in Ft. Lauderdale, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent Veit was liable for: investing a significant portion of Claimants' funds in speculative, over-the-counter securities underwritten by J. Gregory and engaging in unauthorized transactions. Claimants alleged that the investments were unsuitable for them because they were too large for persons in Claimants' financial position. Claimants maintained that J. Gregory, Borden and Mongno were also liable for failing to supervise Veit.

Respondent Veit denied all allegations of wrongdoing and alleged the following: the transactions complained of were suitable for Claimants; and, all purchases were made with Claimants approval and were not unauthorized. Veit alleged that looking at Claimants entire account, it appears that the account made a profit and Claimants are attempting to "cherry pick" only those trades that were unprofitable. Veit asserted affirmative defenses including: failure to state a claim; unclean hands; failure to timely complain; any losses were due to market conditions; failure to mitigate damages; waiver; assumption of risk; contributory negligence; authorization; and, ratification.

Respondents Borden and Mongno denied all allegations of wrongdoing and alleged that neither Mongno nor Borden were principals or supervisors at J. Gregory during the time period in question. Respondent Mongno and Borden asserted affirmative defenses including: failure to state a claim; assumption of risk; the purchases were suitable; authorization, ratification; approval; waiver; estoppel; any losses were caused by market conditions; failure to mitigate damages; failure to exercise due diligence; and there is no private right of action under the NASD Rules of Fair Practice.

RELIEF REQUESTED

Claimants requested damages in the amount of \$65,000.00, plus interest and costs.

Respondent Veit requested dismissal of the claim plus such other relief as the panel deemed appropriate.

Respondents Mongno and Borden requested dismissal of the claim plus costs in the amount of \$1,500.00 each for travel and expenses and such other relief as the panel deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

1. On October 31, 1995, Respondent J. Gregory filed for bankruptcy and, pursuant to the automatic stay provisions of the United States Bankruptcy Code, J. Gregory was, therefore, dismissed from this proceeding without prejudice and the panel has made no findings with respect to J. Gregory.

2. 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 the NASD.

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 Veit, Borden and Mongno are found not liable and all claims against them are hereby dismissed.

2. Claimants are hereby found liable and shall pay to Respondent Borden the amount of \$900.00 for travel costs and hotel expenses incurred in attending the proceeding.

3. Claimants are further found liable and shall pay to Respondent Mongno the amount of \$1,100.00 for travel costs and hotel expenses incurred in attending the proceeding.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,800.00 (three sessions x \$500.00 per session plus one prehearing conference x \$300.00).

1. Claimants are hereby assessed \$1,800.00 for which the NASD shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof, leaving a balance due to the NASD of \$1,300.00.

2. The NASD shall retain the \$150.00 non-refundable filing fee previously paid by Claimants to the NASD.

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3. The NASD shall refund to Respondent Veit the \$300.00 deposit paid by Veit to the NASD.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

 /s/
Nancy J. Cliff, Esq.

Public/Chairperson

 /s/
Donald R. McGahan

Industry

 /s/
Irene L. Lapidus, Esq.

Public

Date of Decision: March 10, 1997