

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Mary Jane Estes and
Janie L. Beatty,

Claimants,

v.

No. 95-03966

S. Gregory Smith
Capital Investment Managers, Inc.
Pershing Division of Donaldson Lufkin & Jenrette
and Donaldson Lufkin & Jenrette Securities Corporation,

Respondents.

REPRESENTATION OF PARTIES

The Claimants Mary Jane Estes and Janie L. Beatty ("Claimants") were represented Ronald L. Wilkinson, Esq. of Dallas, TX.

The Respondents Pershing Division of Donaldson Lufkin & Jenrette, and Donaldson Lufkin & Jenrette, ("DLJ") were represented by Rodney Acker of Jenkins & Gilchrist located in Dallas, TX.

The Respondents S. Gregory Smith ("Smith") and Capital Investment Managers ("Capital") were unrepresented by counsel.

CASE INFORMATION

Statement of Claim was filed on or about August 17, 1995.

Amended Statement of Claim was filed on or about October 16, 1995.

Claimants' Submission Agreement was signed on July 14, 1995.

Statement of Answer and Motion to Dismiss was filed by Respondent DLJ on or about September 25, 1995.

The NASD has no record of Respondent, Smith's Answer.

The NASD has no record of Respondent, Capital's Answer.

The NASD has no record of DLJ having filed a Uniform Submission Agreement with the NASD.

HEARING INFORMATION

The hearing was held on April 15, 1996 for one (1) session.

The hearing location was Dallas, TX.

CASE SUMMARY

Claimants alleged that their broker S. Gregory Smith and Capital Investment Managers, Inc. breached their agreement to invest their money conservatively. The securities involved were Waterpoint Systems, Inc. The Claimants also allege that their signatures were forged without their prior consent or knowledge. Further, Claimants alleged that Respondent DLJ failed to abide by good business practice and disregarded rules and regulations regarding authorization of their funds to third parties, breached their contract, and violated New York Stock Exchange Rule 405.

Respondent DLJ denied any liability for Claimants alleged losses. In its Answer/Motion to Dismiss Respondent DLJ alleged that it was only the clearing broker for Respondent Capital Investment Managers, Inc. governed by a written Clearing Agreement. The Clearing Agreement strictly defines the duties and responsibility of the parties and under the Clearing Agreement and the applicable law Respondents have no liability for any alleged losses Claimants' incurred.

RELIEF REQUESTED

Claimants requested that they be awarded damages for loss of principal in the amount of \$140,000.00, loss of interest in the amount of \$28,500.00, punitive damages in the amount of \$50,000.00, attorney's fees in the amount of \$20,000.00 and the cost of arbitration.

Respondent DLJ requested that it be dismissed from this matter. Respondent alternatively requested that Claimants take nothing from it and that Respondent recover its costs and attorneys fees from Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The Respondents Donaldson Lufkin & Jenrette Securities Corporation, including but not limited to, Pershing Division thereof and Mary Jane Estes and Janie L. Beatty entered into a Compromise Settlement Agreement and Mutual Release Agreement which was filed with the NASD on May 21, 1996. Therefore no decision of the panel was rendered as to Donaldson Lufkin & Jenrette Securities Corporation, including but not limited to, Pershing Division thereof.

Upon review of the file and the representations made on behalf of the Claimant, the panel has determined that Respondents S. Gregory Smith and Capital Investment Manager, Inc. have been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code of Arbitration Procedure (the "Code"). The panel also determined that Respondents had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondents S. Gregory Smith and Capital Investment Managers, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code by having executed a written account agreement to arbitrate any dispute arising out of the relationship of the parties, are required to submit to arbitration and therefore are bound by the determination of the panel on all issues submitted.

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). That Respondents S. Gregory Smith and Capital Investment Managers, Inc. are jointly and severally liable for and shall pay the Claimants Mary Jane Estes and Janie L. Beatty the sum of \$117,000.00 (one hundred seventeen thousand dollars and no cents) in compensatory damages and 8% interest compounded annually commencing September 28, 1994;