

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles and Rose Fairbanks

95-03984

Name of Respondents

Rickel and Associates Inc.
John Rock
Robert Chason
Paul Kotos

REPRESENTATION

For Claimants Charles and Rose Fairbanks ("the Fairbanks"): Stephen D. Spivey, P.A., Ocala, Florida.

For Respondent Rickel and Associates, Inc. ("Rickel"): Vincent P. Sarnatora, Director of Compliance, Rickel and Associates, Inc.

Respondent, Robert Chason ("Chason") was pro se.

CASE INFORMATION

Statement of Claim filed: August 18, 1995.

Claimants' Submission Agreement signed on: August 15, 1995.

Statement of Answer filed by Respondent, Rickel on September 29, 1995.

Respondent Rickel's Submission Agreement signed on: September 21, 1995 by Elliot J. Smith on behalf of Rickel.

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

HEARING INFORMATION

Four hearing sessions were conducted on August 28 and 29, 1996 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that the claim was based upon unsuitability, misrepresentation, negligent supervision, unauthorized trading and violations of the NASD Rules of Fair Practice, the Securities Exchange Commission, and Florida law. Claimants next alleged that between February of 1994 and March of 1995 the Respondents solicited the Claimants to open accounts with their firms and began vigorously trading small capitalization, new issue equity stocks all selling for less than seven dollars per share. Claimants next alleged that during the relevant time period the Respondents invested in excess of \$290,000.00 of the Claimants' funds who realized a net trading loss of \$139,305.21. Claimants next alleged that none of the equity investments met the Claimants' stated investment objectives and there were numerous instances of unauthorized trading and misrepresentation.

Respondent Rickel alleged that: F.N. Wolf ceased operations in June 1994. In July 1994, a group of account executives in the Jacksonville, Florida branch office became employed with Rickel. The customer accounts of that branch office subsequently became associated with Rickel. Rickel is not and was not ever formally known as Wolf Financial Group, Inc. or F.N. Wolf & Co., Inc.. Respondent alleged that, as a result of an inadvertent error during the tape to tape conversion of the Rickel accounts clearing through J.W. Charles to Oppenheimer Clearing Corp., the Fairbanks account was transferred to Lewco Securities ("Lewco"). Rickel credited the account \$3,500.00 as a gesture of goodwill for events that occurred while the account was maintained at F. N. Wolf and the inadvertent transfer to Lewco.

Respondent alleged that the liquidation of 2,500 shares of New Day Beverage and 1,200 shares of United Vision Group, Inc. occurred while the Fairbanks account was maintained at DMG Securities, Inc.. The balance of the United Vision Group, Inc. shares were inadvertently transferred to Lewco and subsequently sold as soon as it moved to Rickel. Respondent alleged that the losses as a result of Chason's handling of the account were without merit since the activity occurred prior to the accounts becoming Rickel accounts. Respondent alleged that the allegations of unauthorized transactions involving Alpha Hospitality Corp. are disputed by the letter from Chason which indicated that all transactions were authorized.

Respondent Chason failed to file an Answer.

RELIEF REQUESTED

Claimants requested damages in excess of \$139,000.00 which represents compensation for all of their trading losses; a rescission of all new issue stock purchases; disgorgement of all commissions and profits generated from the referenced trades; an award of punitive damages; and, an award of costs including reasonable attorneys' fees.

Respondent Rickel requested dismissal of the claim.

Respondent Chason failed to file an Answer.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the first hearing session, the arbitration panel was informed that the Claimants were dismissing with prejudice all claims against Respondents Paul Kotos and John Rock effective August 28, 1996.

Pursuant to the Automatic Stay Provisions of the U. S. Bankruptcy Code, all matters concerning Respondent F. N. Wolf & Co., Inc. were stayed by court order dated August 21, 1995. Consequently, no determination is made by this panel with respect to F. N. Wolf.

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.

The panel finds that Chason was required by Sections 10301 and 10314 of the Code to file an Answer and sign a Submission Agreement since Chason was a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred. Respondent Chason did not appear at the hearing. Based on the record evidence, the panel finds that Chason received due notice of this proceeding.

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. The Respondent Chason is hereby found liable and shall pay to the Claimants the sum of \$77,000.00 plus pre-judgment interest of \$22,000.00 for a total sum of \$99,000.00.
2. The Respondents Chason and Rickel are hereby found liable, jointly and severally, and shall pay to the Claimants the sum of \$58,000.00 plus pre-judgment interest of \$17,000.00 for a total sum of \$75,000.00.
3. The Respondents Chason and Rickel are further found liable, jointly and severally, and shall pay to the Claimants the sum of \$29,500.00 representing attorneys' fees pursuant to the Federal Arbitration Act.
4. The Respondents Chason and Rickel are further found liable, jointly and severally and shall pay to the Claimants the sum of \$50,000.00 representing punitive damages pursuant to the Federal Arbitration Act and related case law. The arbitrators determined that the conduct of these two Respondents was so egregious as to warrant an award of punitive damages.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$3,000.00 (4 sessions x \$750.00).

1. The Respondents Chason and Rickel are hereby assessed, jointly and severally, forum fees of \$3,000.00 for which the NASD shall retain the \$750.00 previously deposited by the Claimants in partial satisfaction thereof leaving a balance due to the NASD of \$2,250.00
2. Respondents Chason and Rickel shall refund to Claimants the \$750.00 hearing session deposit and the \$200.00 non-refundable filing fee previously paid by Claimants.
3. The NASD shall retain the nonrefundable filing fee of \$200.00 previously paid by the Claimants to the NASD.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
James F. Turner, III

Public

_____/s/_____
Barney O. Spurlock

Public

_____/s/_____
Norman Morris

Industry

Date of Decision: December 19, 1996