

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gary E. Thomas

and

95-04465

Name of Respondent

Chatfield Dean & Company, Inc.

Schneider Securities, Inc.

Mark E. Thomas

REPRESENTATION OF PARTIES

Gary E. Thomas ("Claimant") was represented by Stuart N. Bennett, Esq., Brega and Winters, P.C., Denver, Colorado.

Chatfield Dean & Company, Inc. ("Respondent Chatfield") was represented by Christa D. Taylor, Esq., Chatfield Dean & Company, Inc., Greenwood Village, Colorado.

Schneider Securities, Inc. ("Respondent Schneider") was represented by Gary Ceriani, Esq., Davis & Ceriani, P.C., Denver, Colorado.

Mark E. Thomas ("Respondent Thomas") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about September 20, 1995. Submission Agreement of Claimant Gary E. Thomas was signed on July 24, 1995.

Statement of Answer was filed by Respondent Chatfield Dean & Company, Inc. on or about October 23, 1995. Submission Agreement of Respondent Chatfield Dean & Company, Inc. was signed on October 19, 1995 by S. Cheryl Bauman.

Statement of Answer was filed by Respondent Schneider Securities, Inc. on or about October 25, 1995. Submission Agreement of Respondent Schneider Securities, Inc. was signed on October 25, 1995 by Rick J. Rouse.

Statement of Answer was filed by Respondent Mark E. Thomas on or about October 23, 1995. Submission Agreement of Respondent Mark E. Thomas was signed on October 25, 1995.

HEARING INFORMATION

The hearing was held on Wednesday, January 22, 1997 for two (2) sessions and Thursday, January 23, 1997 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondents Chatfield and Schneider were responsible for the actions of Respondent Thomas under the doctrine of *respondeat superior*; that Respondents breached their fiduciary duty to the Claimant; and failed to comport with the standard of care of reasonably prudent securities brokers under the circumstances. Specifically, Claimant alleged:

- ▶ That after Respondent Thomas had joined Chatfield as a broker he contacted him to purchase a block of 10,000 shares of AgBag.
- ▶ That Respondent Thomas in order to induce the Claimant to make the investment, guaranteed that the Claimant would not lose any money.
- ▶ That Respondent Thomas represented to the Claimant that by purchasing the block of AgBag, Claimant would position himself to make a big profit later on.
- ▶ That after the price of the stock had declined, Respondent Thomas persuaded Claimant to hold the stock and not sell.
- ▶ That after the price of the stock had rebounded above the original purchase price, Respondent Thomas refused to sell the stock, arguing that the price would go higher.

Respondent Chatfield denied that any misrepresentations were made regarding the securities complained of in the Statement of Claim. It was also stated that the securities at issue were suitable given the Claimant's income, net worth, and investment objectives. Respondent Chatfield also asserted the following affirmative defenses:

- ▶ Claimant fails to state a cause of action which would entitle him to relief.
- ▶ Claimant has failed to mitigate his damages, if any.

Respondent Schneider denied the allegations of wrongdoing asserted against it in the Statement of Claim. Respondent Schneider stated that Claimant was an extremely knowledgeable and sophisticated investor who represented to it that his annual income was in excess of \$85,000, his net worth was in excess of \$600,000 exclusive of residence, and that he had invested in equities and bonds with Merrill Lynch and Chatfield, Dean & Co. prior to the establishment of the account with Schneider. In addition, Respondent Schneider stated that the Claimant had represented to it that his investment objectives included growth and speculation, and that all transactions in the account

effected at Schneider were consistent with those investment objectives. Respondent Schneider also asserted numerous affirmative defenses.

Respondent Thomas denied making any guarantee to the Claimant. He also stated that the Claimant, having invested with other firms and brokers, knew of the risks involved with any stock purchase. Respondent Thomas further stated that upon the Claimant's premise that he cover the AgBag losses, he suggested that the Claimant agree to give it a year or so to make up the losses with any profits made trading other stocks on his recommendation.

RELIEF REQUESTED

Claimant requested an award in his favor against Respondents jointly and severally, for not less than \$29,000, together with costs, expenses, reasonable attorneys' fees and pre and post judgment interest and such other amounts or relief as the panel may deem appropriate.

Respondent Chatfield requested that the claims asserted against it be dismissed and that it be awarded its' costs and attorneys' fees. At the hearing, Respondent Chatfield argued the position that the arbitration panel did not have the authority to award attorneys' fees.

Respondent Schneider requested that the claims asserted against it be dismissed with prejudice and that it be awarded its' costs and attorneys' fees incurred in defending his matter.

Respondent Thomas requested that the claims asserted against him be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of the Claimant's case in chief, Respondent Schneider asserted a Motion to Dismiss. After hearing argument on the motion, the panel reserved its ruling until after hearing the testimony on behalf of all Respondents. After considering the evidence and testimony presented at the hearing, the undersigned arbitrators have decided to **grant** the motion. Therefore, Respondent Schneider's Motion to Dismiss is granted.

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 Regulation, Inc. Office of Dispute Resolution.

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. After considering all evidence and testimony and considering the credibility of Gary Thomas and Mark Thomas, the undersigned arbitrators find that the Claimant has failed to meet his burden of proof. Therefore, the claims asserted in this matter against Respondents Chatfield Dean & Company, Inc. and Mark E. Thomas are dismissed in their entirety.
2. Claimant Gary E. Thomas shall be and hereby is liable for and shall pay to Respondent Schneider Securities, Inc. attorneys' fees and costs in the amount set forth in its attorneys fees and costs affidavit to be submitted to the parties within fifteen (15) days of the receipt of this award. In no event is the award of attorneys' fees and costs to exceed the sum of \$10,000.
3. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$400 = \$1,600 in forum fees. Pursuant to §10332(b) 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.

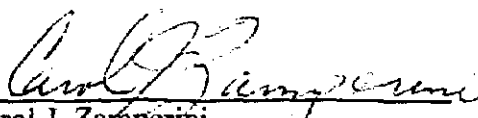
Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Gary E. Thomas. Claimant Gary E. Thomas shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,200 as the balance due for forum fees.

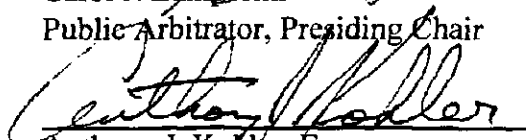
All monies previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Schneider Securities, Inc. shall be refunded.

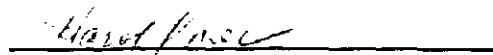
Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 paid by Respondent Chatfield Dean & Company, Inc.

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The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$400 previously deposited by Claimant Gary E. Thomas. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**


Carol J. Zamperini
Public Arbitrator, Presiding Chair


Anthony J. Kohler, Esq.
Public Arbitrator


Harold C. Jones
Industry Arbitrator

Dated:

1-23-97

1/23/97

1-23-97