

9/11/06

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Betty M. Renfroe

vs.

95-04838

Name of Respondents

Investors Associates
Frederick T. Mitchell

REPRESENTATION

For Claimant Betty M. Renfroe ("Claimant") appeared Raymond L. Moss, Esq., at the time of the filing with the law firm Branch, Pike & Ganz, and now with the law firm of Sims, Moss, Kline & Davis, LLP, both located in Atlanta, Georgia.

For Respondents Investors Associates ("Investors") appeared Lawrence R. Gelber of the law firm Beigel, Schy, Lasky Rifkind Fertik & Gelber located in New York, New York.

For Respondent Frederick T. Mitchell ("Mitchell") appeared Stephen E. Hudson, Esq., of the law firm Kilpatrick Stockton LLP located in Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on: October 11, 1995.

Claimant's Submission Agreement signed on: October 11, 1995.

A Joint Statement of Answer filed by Respondents on: December 04, 1995.

Respondent Investors' Submission Agreement signed on: December 07, 1995.

Respondent Mitchell failed to execute a Submission Agreement as required by Rule 10314(b) of NASD Regulation, Inc. Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference:	September 04, 1996	One Session
	September 19, 1996	One Session
Hearing Dates/Sessions:	September 10, 1997	Two Sessions
	September 11, 1997	Three Sessions

The pre-hearing conferences were held telephonically. The hearings were conducted at the Atlanta Hilton Inn and Towers located in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that while her account was housed at Respondent Investors and under the direction of Respondent Mitchell, Respondents Investors and Mitchell (collectively referred to as "Respondents") breached their fiduciary duty, and engaged in fraudulent and manipulative practices. Claimant further alleged that these practices included excessive trading, churning the account to generate commissions, making unauthorized and discretionary trades, making unsuitable trades, and misrepresenting or omitting material facts. Claimant also alleged that these acts constituted breach of contract, breach of duty, breach of fiduciary duty, and violations of securities laws, rules, and regulations. Claimant alleged that Respondent Investors failed to reasonably supervise Respondent Mitchell and monitor Claimant's account to ensure that the trading was in accordance with her investment objectives.

Claimant asserted that she opened an account, with Respondent Investors, based on the assurances of Respondent Mitchell that her principal would be protected and higher interest would be yielded on the investment. Claimant asserted that she disclosed to Respondents that she was an unsophisticated investor with conservative, low risk investment objectives. Claimant further asserted that she was assured that her account was performing well and trading with established stocks like AT&T, when in actuality the account was suffering losses and stocks were rarely held for more than thirty days. Claimant asserted that on April 20, 1995, she prepared a letter instructing Respondents to cease trading in her account.

Respondents maintained that the transactions in Claimant's account were entered into with Claimant's knowledge and consent. Respondents maintained that each recommendation made by Respondent Mitchell was made in good faith on the belief that it was suitable for the account and in conformance with all rules and regulations. Respondents offered the following affirmative defenses: Claimant assumed the risk of her investments; Claimant failed to mitigate her damages; Claimant ratified each transaction; claims are barred by the doctrine of estoppel and waiver, and the Statement of Claim fails to state a claim upon which relief can be granted.

RELIEF REQUESTED

Claimant Betty M. Renfroe requested:

- 1) Actual damages in the amount of \$114,650.00;
- 2) Punitive damages in the amount of \$880,000.00;
- 3) Costs, expenses, and disbursements, including reasonable attorneys' fees, and
- 4) Other such relief that the panel deems just and proper

Respondents requested that the Statement of Claim be dismissed in its entirety, the Motion to Dismiss be granted, and Respondent Investors should be awarded the costs, fees, expenses, and reasonable attorneys' fees in the amount of \$7,500.00 incurred in defending this claim, and all other further relief as the panel deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

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.

Respondents entered a Motion to Dismiss with their Statement of Answer, the panel denied this motion

on August 28, 1996.

The panel found their authority to award punitive damages under case law, *Bonar v Dean Witter Reynolds, Inc.* 835 F 2d 1378 (11th Cir. 1988) and *Mastrobuono v Shearson Lehman Hunton, Inc.* 115 S.Ct. 1212 (1995).

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) Respondent Frederick T. Mitchell is hereby liable and shall pay Claimant Betty M. Renfroe compensatory damages in the amount of \$10,000.00.
- 2) Respondent Investors Associates be and hereby is liable and shall pay to Claimant Betty M. Renfroe compensatory damages in the amount of \$67,674.46.
- 3) Respondent Investors Associates be and hereby is liable and shall pay to Claimant Betty M. Renfroe post judgement interest at a rate of 12% per annum from October 14, 1997 until award is paid.
- 4) Respondent Investors Associates be and hereby is liable and shall pay to Claimant Betty M. Renfroe \$25,000.00 in punitive damages.
- 5) Claimant's request for attorneys' fees are hereby denied.
- 6) All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
5 Hearing Sessions x \$1,000.00	=	\$5,000.00
Total Forum Fees	=	\$5,600.00
Hearing Session Deposit	=	(\$1,000.00)
Balance Due NASD Regulation, Inc.	=	\$4,600.00

- 1) Respondent Investors Associates be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$4,600.00 representing the balance due of the total forum fees assessed.

- 2) Respondent Investors Associates be and hereby is liable and shall pay to Claimant the sum of \$1,000.00 as reimbursement of the hearing session deposit.
- 3) Respondent Investors Associates was assessed a Member Surcharge of \$500.00. Respondent Investors Associates submitted the sum of \$500.00 to NASD Regulation, Inc., therefore, no payment is required.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES



Daniel E. Gulden, Esq.
Public Chairperson

Kendall P. Hill
Public Panelist

James H. Bradford
Industry Panelist

Date of Decision: November 3, 1997

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- 2) Respondent Investors Associates be and hereby is liable and shall pay to Claimant the sum of \$1,000.00 as reimbursement of the hearing session deposit.
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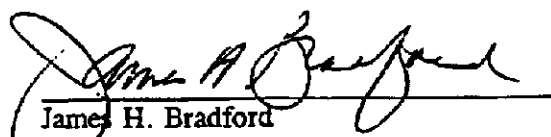
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