

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Charles Appel

95-05196

Names of Respondents

White Rock Partners & Company, Inc. f/k/a Rosenbaum
Securities, Inc. and Harvey A. Rosenbaum

REPRESENTATION

For Claimant, Charles Appel ("Mr. Appel"): Lee H. Schillinger, Esq. and John A. Brekka, Esq., of the Law Office of Lee H. Schillinger, P.A., Hollywood, Florida.

Respondent, Whiterock Partners & Company, Inc. f/k/a Rosenbaum Securities, Inc. ("Whiterock"): pro se.

Respondent, Harvey A. Rosenbaum ("Rosenbaum"): pro se.

CASE INFORMATION

Statement of Claim filed: November 1, 1995.

Claimant's Submission Agreement signed on: October 31, 1995.

Statement of Answer and Cross-Claim filed by Respondent, Whiterock, on January 12, 1996.

Respondent Rosenbaum's Statement of Answer filed on: December 8, 1995.

Respondent Whiterock's Submission Agreement/Corporate Acknowledgment signed on: December 28, 1995 by Cathleen Seneca on behalf of the firm.

Respondent Rosenbaum's Submission Agreement signed on: December 11, 1995.

HEARING INFORMATION

On December 12 and 13, 1997 hearings lasting four (4) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged: that Respondent, Whiterock, by and through its broker and former principal, Rosenbaum, sold unsuitable, high risk limited partnerships and unregistered investments to the Claimant for his IRA account; that the investments at issue were not registered with the Securities and Exchange Commission ("SEC") nor with any state; that Rosenbaum assured Claimant that the investments were sound and suitable investments for his IRA account and failed to disclose that he had been approached by the General Partner to raise funds for Super Shuttle, for which he was receiving an equity interest. Claimant maintained that said guaranties constituted a manipulative device in violation of Florida and Federal Securities laws; that, in addition, no notice was ever mailed or otherwise delivered to Claimant informing him that he had three days within which to cancel the sale; and, that Rosenbaum engaged in said fraudulent and deceptive practices to induce the purchase of speculative, illiquid and high-risk unregistered securities which was not actively traded on a national exchange or computerized system. Claimant further stated that Rosenbaum concealed the true condition of the investments from Claimant for years, by continuing to make false and misleading representations as to the value of the investments; that the investments complained of and sold by Rosenbaum were SuperShuttle, Alert Income Partners V, and, Medical Growth Fund V.

Respondent, Whiterock, in its Statement of Answer stated the following: that Claimant waited five years before bringing this arbitration against his (Claimant's) close friend, Respondent, Rosenbaum, and the broker dealer firm which Rosenbaum owned, Rosenbaum Securities; that Claimant, apparently in search of a "deep pocket" commenced the arbitration only after Rosenbaum, who suffered substantial financial difficulties, sold all of the shares of his firm to others who changed the firm's name to White Rock Partners & Co. Inc.; Respondent, Whiterock, further asserted a Cross-Claim against Rosenbaum and stated that if any wrongdoing did occur as alleged by the Claimant, it was Rosenbaum who misrepresented the facts, who as alleged by Respondent, Whiterock, further asserted that it was Rosenbaum, as the owner of the firm, who would have been responsible for his own supervision and overseeing compliance with all applicable rules and regulations. Respondent, Whiterock, further contended that the facts, as well as principles of fairness and equity mandate that if any wrongdoing is established, Rosenbaum should be solely and personally be held liable to Claimant for any losses sustained.

Respondent, Rosenbaum, denied the allegations of wrongdoing contained in the Statement of Claim and Crossclaim and asserted the following affirmative defenses: (1) all of the Claims are barred by the applicable federal and state statutes of limitations; and (2) if a guarantee was made, which is denied, same is barred by the statute of frauds.

RELIEF REQUESTED

Claimant requested an award of damages of approximately \$175,000.00 plus interest, costs, attorneys' fees, incidental damages, punitive damages and such other relief as the Panel deems appropriate.

Respondent, Whiterock, requested dismissal of the claim.

Respondent, Rosenbaum, requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Whiterock did not attend the hearing. Pursuant to Section 10101 of the Code of Arbitration Procedure ("Code"), the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that the Respondent, Whiterock, was a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondent, Whiterock, pursuant to Section 10301 of the Code.

In addition, in accordance with Sections 10310, 10315 and 10318 of the Code, the arbitration Panel found that the NASD provided Respondent, Whiterock, with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitration panel, therefore, determined to proceed with the hearing without Respondent, Whiterock, whose absence was unexcused.

In view of the above, the arbitration panel found that the Respondent, Whiterock, was required to attend the hearing.

The parties at the hearing agreed that the award in this matter may be executed in counterparts 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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Whiterock and Rosenbaum, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$180,124.00 including interest;
2. Respondents are found not liable under Chapter 517, Florida Statute, for attorneys' fees.
3. Claimant's requests for costs, expenses, punitive damages and incidental damages are hereby denied.
4. Cross Respondent, Rosenbaum, is found not liable and therefore the Cross-Claim against him is hereby dismissed.

OTHER COSTS

The parties shall each bear their own costs and expenses incurred in connection with this proceeding.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure the arbitration panel has assessed Forum Fees in the amount of \$3,000.00 (three hearing sessions X \$750.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$1,000.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimant leaving a balance due to NASD Regulation, Inc. in the amount of \$250.00.
2. Respondents, Whiterock and Rosenbaum, are hereby assessed Forum Fees, jointly and severally, in the amount of \$2,000.00 for which the NASD shall retain the \$750.00 previously deposited by Whiterock in partial settlement thereof leaving a balance due to NASD Regulation, Inc., in the amount of \$1,250.00.
3. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

4. ~~NASD Regulation, Inc. shall retain the non-refundable filing fee of \$500.00 paid by Respondent, Whiterock.~~

5. ~~NASD Regulation, Inc. shall retain the \$350.00 member surcharge paid by Respondent, Whiterock.~~

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Robert Wayne Pearce, Esq.

Public/Chairperson

/s/

Manuel A. Hofferaman

Public/Panelist

/s/

Marc S. Piven

Industry/Panelist

Date of Decision: January 16, 1997