

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

Ronnie D. and Peggy L. Foster and
Patricia M. Padgett,
Claimants,

and

No. 95-05639

Cheryl Rodgers,
Respondent.

REPRESENTATION OF PARTIES

Claimants, Ronnie D. and Peggy L. Foster (hereinafter, "the Fosters") and Patricia M. Padgett ("Padgett") were represented by Bill Boyd, Esquire of Boyd & Veigel, located in McKinney, Texas.

Respondent, Cheryl Rodgers ("Rodgers") was originally represented by Daniel Waller of Secore & Waller, located in Dallas, Texas, who later withdrew from representation of Rodgers. Rogers thereafter was represented by Alvin W. Berry of Dallas, Texas.

CASE INFORMATION

Claimants, the Fosters' and Padgett's Statement of Claim was jointly filed on or about December 7, 1995. Claimants, the Fosters' and Padgett's Submission Agreements were all signed on November 20, 1995.

Respondent, Rodger's Statement of Answer was filed on or about January 16, 1996. Respondent, Rodger's Submission Agreement was signed on January 16, 1996.

HEARING INFORMATION

The hearing was held on May 13, 1998, at 9:00 a.m., for two (2) sessions in Dallas, Texas.

CASE SUMMARY

Ronnie D. and Peggy L. Foster and Patricia M. Padgett, ("Claimants,") asserted that Respondent, Cheryl Rodgers mishandled their accounts and violated Rodger's common law fiduciary duty to her clients and then tried to cover her wrongdoing which added to the losses to both the Fosters' and Padgett's accounts. After a personal visit to their home in October, 1989, Claimant said Rodgers convinced the Fosters to transfer their brokerage

account from Edward D. Jones & Co., to Rotan Mosle by promising she could safely build their investments from \$250,000.00 to a level of \$800,000.00 and by assuring them that meanwhile, their \$3,000.00 monthly income from investment returns would be unaffected. Claimants said Rodgers had them sign blank forms which she told them she would fill in based upon their discussions, and that she then filled in information allowing their funds to be placed in a "high risk" account. By the time Rodgers left Rotan Mosle for Smith Barney in August of 1990, the Fosters' original \$248,811.33 had dwindled to \$68,845.00 which she convinced the Fosters to transfer to Smith Barney with her. Claimants stated that although they questioned Rodgers regarding the status of their account, she responded by telling them that they were misreading their statements. Claimants said that by January of 1991, the Fosters' account had a deficit balance of \$26,000.00 after 144 transactions.

Claimants next told of how the Fosters introduced Rodgers to Padgett, who told Rodgers her \$150,000.00 left to her after her husband's death was her sole means of support as she would find it difficult to find employment because she had not worked while her husband was alive and had no skills. Like the Fosters, Claimants said that Rodgers had Padgett sign blank forms to open her account at Rotan Mosle, which Rodgers again filled in as allowing high risk investments. As asserted, Padgett transferred \$137,000.00 to Rotan Mosle, which by the time Rodgers convinced her to transfer her account to Smith Barney had a value of \$91,642.00 (including a withdrawal of \$21,000.00 for living expenses.) Claimants noted that aside from Padgett's withdrawal of \$18,175.15 over the next seven months, her account by the end of March of 1991 had become worthless, with a loss of \$73,467.00 after ten transactions.

Finally, Claimants alleged that in order to hide her wrongdoing, Rodgers convinced Claimants that securities of the Fosters were mistakenly placed in Padgett's account, and solicited letters from both the Fosters and Padgett to allow the transfer of securities to the Fosters' account. Claimants asserted that this action amounted to theft and conversion of the securities owned and held in Padgett's account.

Cheryl Rodgers ("Respondent,") denied any wrongdoing or liability as alleged in the Claimants' Statement of Claim. Respondent specifically denied any request to have the Fosters or Padgett sign any blank forms and stated that all actions she took with respect to Claimants' accounts were in line with their investment objectives as stated to her. Respondent also denied any actions with respect to the alleged account transfer. According to the Respondent, the Claimants were at all times aware of each trade engaged in by their accounts, the amount of trading activity and the value of their portfolios, and were aware of and requested a high risk trading strategy in hopes of making money in the market. Respondent asserted the affirmative defenses that: the claims asserted are barred by the be speaks caution doctrine; the doctrine of ratification; the doctrines of estoppel and waiver; and requests offsets or credits by virtue of settlements and funds received by Claimants for matters set forth in this statement of claim.

RELIEF REQUESTED

Claimants, Ronnie D. and Peggy L. Foster and Patricia M. Padgett, requested an award for \$250,000.00 in actual damages, including costs, interest, punitive damages and attorneys' fees.

Respondent, Cheryl Rodgers, requested that the claims asserted against her be dismissed in their entirety and that she be awarded her costs and attorney fees.

OTHER ISSUES CONSIDERED AND DECIDED

On August 23, 1995, the Court In the United States District Court for the Eastern District of Texas, Marshall Division, issued an order that the Plaintiffs, Ronnie D. and Peggy L. Foster and Patricia M. Padgett, and Respondent, Cheryl Rodgers submit to arbitration on or before December 1, 1995.

Upon review of the file and the representations made by/on behalf of Claimants, Ronnie D. and Peggy L. Foster and Patricia M. Padgett, the undersigned Arbitrators have determined that Respondent, Cheryl Rodgers, has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.") The undersigned Arbitrators have also determined that Respondent, Cheryl Rodgers, did receive due notice of the hearing as required under Rule 10318 of the Code.

Ms. Rogers counsel, Alvin W. Berry, Esquire of Dallas, Texas, submitted a letter to the NASD on April 17, 1998 that it was Rogers intent, based upon advice of counsel, to assert her privilege against possible self-incrimination under the Fifth Amendment to the United States Constitution in response to all questions arguably related to this matter. The letter also stated that it was Rodgers intent, at the time, not to be present for the May 13, 1998 hearing should it go forward. The panel determined that the hearing should go forward.

The parties present at the hearing 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. That Respondent, Cheryl Rodgers is liable for and shall pay to Claimants, Ronnie D. and Peggy L. Foster, the sum of \$130,000 in compensatory damages and post-judgment interest at the Texas Judgment Rate from the date the award is served; and
2. That Respondent, Cheryl Rodgers is liable for breach of fiduciary duty and fraudulent conduct, and shall pay exemplary damages pursuant to Federal and State Securities laws to Claimants, Ronnie D. and Peggy L. Foster, the sum of \$30,000.00;
3. That Respondent, Cheryl Rodgers is liable for and shall pay to Claimant, Patricia M. Padgett, the sum of \$15,000.00 in compensatory damages and post-judgment interest at the Texas Judgment Rate from the date the award is served; and
4. That Respondent, Cheryl Rodgers is liable for breach of fiduciary duty and fraudulent conduct, and shall pay exemplary damages pursuant to Federal and State Securities laws to Claimant, Patricia M. Padgett, the sum of \$25,000.00; and
5. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$750.00 = \$1,500.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code,") 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 Rule 10332(c) of the Code, Claimants, Ronnie D. and Peggy L. Foster and Patricia M. Padgett, have paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$200.00 and have also paid the hearing session deposit of \$750.00. Respondent, Cheryl Rodgers is liable for all of the forum

fees in this matter and shall pay the sum of \$750.00 to NASD Regulation, Inc., Office of Dispute Resolution, and shall reimburse Claimants, Ronnie D. and Peggy L. Foster and Patricia M. Padgett the \$750.00 hearing session deposit already paid by Claimants.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent's firm, Smith Barney, has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the \$350.00 member surcharge previously invoiced.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

/s/ Joann Peters

June 18, 1998

Joann Peters, Esquire
Chairperson
Public Arbitrator

Date

/s/ William E. Hartsfield

June 17, 1998

William E. Hartsfield, Esquire
Panelist
Public Arbitrator

Date

/s/ R. Theodore Moock, Jr.

June 25, 1998

R. Theodore Moock, Jr.
Panelist
Industry Arbitrator

Date