

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Jack C. and Margaret C. Dillon

95-06011

Name of Respondent(s)

D.E. Frey & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 29, 1995 Claimants Jack C. and Margaret C. Dillon ("Claimants"), through their representative, Gordon Dihle, Esq., of Dihle & Co., Minot, ND, alleged that Respondent D.E. Frey & Co., Inc. ("Respondent") solicited them to purchase 2,000 shares of Gold Capital Corporation stock, which was not a suitable security for them. Claimants further alleged that Mr. Ron Justice of the firm indicated that the price would rise in value and, if in fact, it fell he promised to sell the stock at their cost because he had many buyers for the stock. Claimants asserted that even after Mr. Justice signed a written promise to sell their stock and provide them with the proceeds, the sale did not occur and Mr. Justice continued to provide false assurances. Claimants contended that they are not sophisticated investors who have knowledge or access to information on stock markets and therefore they believed Mr. Justice when he stated that it was just a formality to sign the "non-solicited form." Claimants further contended that only one person signed the "non-solicited" letter which required both of the Claimant's signatures. Claimants alleged that the Respondent violated NASD and SEC regulations and his fiduciary duty to the clients, and that as a result of the above, Claimants suffered damages for which the Respondent should be held liable.

Respondent D.E. Frey & Co., Inc., through its representative and in-house counsel, Mark Appleton, Esq., maintained that the Gold Capital share purchases were authorized as evidenced by Claimant's signature on one of the purchases and by the fact that he never complained after receiving the confirmations for the transactions. Respondent further maintained that Gold Capital was a suitable transaction and was consistent with the overall activity in Claimants' account. Respondent contended that the Claimants did not introduce sufficient evidence to meet their burden of proof. Respondent further contended that the Claimant was a knowledgeable investor who should have known that there are no "guarantees" against losses in the stock market and therefore the note written by Mr. Justice is not viable. Respondent maintained that it is not in a fiduciary relationship with the Claimants, and only acted as an agent for its customers, and as a result, Mr. Justice was following Claimants instructions when he purchased the stock for them. Respondent further maintained that Claimants' failed in their duty to mitigate damages, because they waited nine months to claim that Respondents should have sold the stock immediately and they were supposed to receive the proceeds of the sale within five days.

Respondent D.E. Frey & Co, Inc. asserted that it committed no wrongdoing, and that therefore, the claims against it should be dismissed.

RELIEF REQUESTED

Claimants Jack C. and Margaret C. Dillon, requested \$6,843.86 in actual damages, plus interest at the rate of 8% per annum, attorney's fees of \$500.00 and reimbursement of the filing fee, along with all costs and expenses incurred in this arbitration matter.

Respondent D.E. Frey & Co., Inc., requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Kathryn P. Beller, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Jack C. & Margaret C. Dillon on December 20, 1995 and by the Respondent D.E. Frey & Co., Inc. on February 26, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent D.E. Frey & Co., Inc. is liable and shall pay to the Claimants Jack C. & Margaret C. Dillon, \$1,750.00 in actual damages.
2. Respondent D.E. Frey & Co., Inc. is liable and shall pay to the Claimants Jack C. & Margaret C. Dillon simple interest at the rate of 8% from July 15, 1996 until the date of payment of the Award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Jack C. & Margaret C. Dillon shall be retained by the NASD, Inc. Respondent D.E. Frey & Co., Inc. is liable and shall pay \$150.00 to the Claimants as reimbursement of the filing fee.

Affirmation

STATE OF COLORADO

} SS:

COUNTY OF DENVER

I, KATHRYN BELLER, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.

Kathryn Beller
Signature of Arbitrator

DATE OF DECISION: July 23, 1996