

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Howard C. Baron

Claimant,

v.

No. 96-01130

Ronald C. Cropper, Jr., and

Michael A. Orlino

Respondents.

REPRESENTATION OF PARTIES

Claimant Howard C. Baron ("Claimant") was represented by Anthony V. Trogan, Esq. of Weisman Trogan Young & Schloss located in Bingham Farms, Michigan.

Respondent Ronald C. Cropper, Jr. ("Cropper") was represented by Joseph R. Corozzo, Jr., Esq. of Rubinstein & Corozzo located in New York, New York.

Respondent Michael A. Orlino ("Orlino") did not appear at the hearing. Respondent Orlino was previously represented by Joseph R. Corozzo, Jr., Esq. of Rubinstein & Corozzo located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about March 14, 1996.

Claimant's Submission Agreement was signed on March 4, 1996.

Respondents' Joint Statement of Answer was filed on or about April 23, 1996.

Respondent Cropper's Submission Agreement was signed on April 16, 1996.

Respondent Orlino's Submission Agreement was signed on April 18, 1996.

HEARING INFORMATION

The hearing was held on May 29, 1997 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that he opened an account with Respondents Cropper and Orlino in early 1993 after a cold call from Respondents Cropper and Orlino. Claimant contended that after the account was opened, Respondents Cropper and Orlino engaged in common conduct which consisted of the following: (1) the recommendation and sale to Claimant of unregistered, non-exempt securities in violation of the Michigan Securities Act; (2) the recommendation and sale to Claimant of securities in the State of Michigan while not registered, licensed or otherwise authorized to do so in violation of the Michigan Securities Act; (3) the recommendation of unsuitable securities to Claimant; (4) the failure to disclose risks associated with ownership of high risk securities; (5) misrepresentation; (6) the unauthorized purchase and sale of securities for Claimant's account; (7) refusal to communicate with Claimant on a regular basis; (8) refusal to provide Claimant with basic account information on a timely basis; (9) refusal to follow Claimant's directions; and (10) the active manipulation of the market prices of securities held in the account at time of purchases and sales.

Respondents Cropper and Orlino denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that Respondent Orlino contacted Claimant to open a new account with the purchase of 250 shares of Physicians Computer Network stock ("PCNI") at \$4 1/8. Respondents contended that after attaining the needed suitability information from Claimant, including information that Claimant was a sophisticated investor, Respondents decided to open the account. Respondents asserted that the 250 shares of PCNI was sold on September 25, 1993 at \$6 1/8 for a 48% gain and a profit of \$500. Respondents also maintained that 500 shares of a second security called Eaglevision Environmental ("EAGV") was purchased for Claimant and that the 500 shares of EAGV was sold on September 7, 1993 for \$5 a share for a gain of 19% and a profit of \$360. Respondents contended that these were the only two securities which were sold in Claimant's account. Respondents asserted that at no time did Claimant lodge any complaint or uneasiness about his stock positions. Respondents further maintained that they spoke to Claimant at least once a week and updated him on his positions.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$40,000, interest at the rate of 12%, costs in the amount of \$1,050, attorney fees, exemplary damages, punitive damages, additional damages, and rescission of all transactions.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Orlino's Motion to Attend the Hearing by Telephone was denied.

Respondent Orlino did not appear at the hearing. Upon review of the file and/or representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Orlino had received due notice of the hearing as required under §10315 of the NASD Code of Arbitration Procedure ("Code") and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Claimant's Motion to Bar Respondent Orlino from presenting arguments at the hearing for failing to appear at the hearing was 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 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) The Statement of Claim is hereby dismissed in its entirety with prejudice; and
- (2) 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 dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session. There were two (2) hearing sessions x \$400 = \$800 in forum fees. Pursuant to §10332(b) of 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 (1/2 total forum fees) previously deposited by Claimant. Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute

Resolution shall **retain** the postponement deposit in the amount of \$400 previously deposited by Respondents in connection with Respondents' Motion for Adjournment.

Pursuant to §10332(c) of the Code, Respondents Ronald C. Cropper, Jr. and Michael A. Orlino are jointly liable for and shall pay forum fees in the amount of \$400 (1/2 total forum fees). Pursuant to §10332(c) of the Code, Claimant Howard C. Baron is liable for postponement fees in the amount of \$400 assessed in connection with Claimant's Motion for Adjournment.

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

Concurring Arbitrators' Signature

\s\ Terrance J. Dorcy

Terrance J. Dorcy
Chairperson
Public Arbitrator

June 3, 1997

Dated:

\s\ Gordon F. Knight, Ph.D

Gordon F. Knight, Ph.D
Panelist
Public Arbitrator

June 6, 1997

Dated:

\s\ Jay B. MacKenzie

Jay B. MacKenzie
Panelist
Industry Arbitrator

June 4, 1997

Dated:

For NASD Regulation use only:
Date award served on the parties: June 10, 1997