

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Star Mining Co., Inc.,
Five Star Mining Limited Partnership,
Larry J. Hiatt and Laura Hiatt, and John M. Hiatt,

Claimants,

and

No. 96-01241

Dain Bosworth & Co., Inc., and
George K. Baum & Co.,
Respondents,

REPRESENTATION OF PARTIES

Claimants Star Mining Co., Inc., Five Star Mining Limited Partnership, Larry J. Hiatt and Laura Hiatt, and John M. Hiatt were represented by John J. Miller, Esquire of Law Offices of John J. Miller, P.A., located in Overland Park, Kansas.

Respondent Dain Bosworth & Co., Inc. was represented by Gordon D. Gee, Esquire of Seigfreid, Bingham, Levy, Selzer & Gee, P.C., located in Kansas City, Missouri.

Respondent George K. Baum & Co. was represented by Anthony J. Durone and W. Perry Brandt, Esquires of Berkowitz, Feldmiller, Stanton & Brandt, Kansas City, Missouri. Respondent George K. Baum & Co. did not participate in the hearing of this matter. Respondent George K. Baum & Co. reached a settlement with the Claimants prior to the hearing in this matter.

CASE INFORMATION

Claimants Star Mining Co., Inc., Five Star Mining Limited Partnership, Larry J. Hiatt and Laura Hiatt, and John M. Hiatt's Statement of Claim was filed on or about March 14, 1996. Star Mining Co., Inc.'s Submission Agreement was signed on February 9, 1996 by Larry Hiatt, President of Star Mining Co., Inc. Five Star Mining Limited Partnership's Submission Agreement was signed on February 9, 1996 by Star Mining Co., General Partner, Larry Hiatt, President of Star Mining Co. Larry J. Hiatt's Submission Agreement was signed on February 9, 1996. Laura Hiatt's Submission Agreement was signed on March 8, 1996. John Hiatt's Submission Agreement was signed on February 9, 1996.

Respondent Dain Bosworth & Co., Inc.'s Statement of Answer was filed on or about May 28, 1996. Dain Bosworth & Co.'s Submission Agreement was signed on May 20, 1996 by Terrance L. Wilson, Vice President/Managing Director of the Kansas City Plaza Dain Bosworth & Co., Inc. office.

Respondent George K. Baum & Co.'s Statement of Answer was filed on or about May 28, 1996. George K. Baum & Co.'s Submission Agreement was signed on May 24, 1996 by Donald H. Zurliene, Jr., Senior Vice President/Director of Compliance of George K. Baum & Co.

HEARING INFORMATION

The hearing was held on: February 4, 1997 for two (2) sessions; and
February 5, 1997 for two (2) sessions.

The hearing was held in Kansas City, Missouri.

CASE SUMMARY

Claimants Star Mining Co., Inc. ("Star Mining"), Five Star Mining Limited Partnership ("Five Star"), Larry J. Hiatt and Laura Hiatt, and John M. Hiatt (hereinafter collectively referred to as "Claimants") brought this action to recover losses sustained in their accounts. Claimants alleged that their broker James Randazzo ("Randazzo"), who was employed by respondents Dain Bosworth & Co., Inc. and George K. Baum & Co., or someone acting at Randazzo's direction, during 1994 and 1995, forged Claimants' signatures on account documents, prepared false account documents, transferred funds among Claimants' accounts, engaged in unauthorized trading in Claimants' Star Mining and Five Star accounts, failed to disclose material facts to Claimants, and falsely represented to Claimants that he possessed material and non-public information that would impact the value of securities he traded. Claimants further alleged that Dain Bosworth & Co., Inc. and George K. Baum & Co. grossly failed to supervise Randazzo and to detect the misconduct in Claimants' accounts. Claimants also alleged that Randazzo never obtained proper trading authorizations at Dain or Baum for either the Five Star or Star Mining accounts, the account agreements for these accounts were forged, and thus all trading by Respondents in these accounts were unauthorized. Additionally, Claimants asserted that Randazzo or someone acting at his direction also forged Larry Hiatt's signature to conceal misconduct in Claimants' accounts.

Claimants made the following legal claims: (1) violations of state and federal securities laws, which provide for the recovery of principal, interest from the date of payment, costs, and reasonable attorneys' fees; (2) the right to actual damages, punitive damages, reasonable attorneys' fees and costs under the Missouri Merchandising Practices Act; (3) fraud and misrepresentation; (4) negligence; (5) violation of NASD rules; and (6) breach of fiduciary duty. The allegations arose out of transactions in securities more fully covered during the hearing in this matter.

Respondent Dain denied the allegations set forth in the Statement of Claim. Dain also made the following affirmative defenses: (1) Claimants' Statement of Claim fails to state any claim for which relief can be granted; (2) Claimants' Statement of Claim fails to alleged any claim with sufficient particularity; (3) Claimants are estopped from asserting the claims set forth in their Statement of Claim due to their own acts and conduct; (4) Claimants waived their rights, if any exist, to assert the claims set forth in their Statement of Claim; (5) Claimants ratified, approved, accepted, acquiesced in, and confirmed in all respects the acts complained of in their Statement of Claim; (6) Some of Claimants' claims are barred by the applicable statutes of limitations; (7) Claimants' claims are barred by the doctrine of laches; (8) Claimants' claims are barred by the doctrine of

assumption of the risk because any losses in Claimants' accounts at Dain were the result of economic and market conditions; and (9) Claimants claims are barred by Claimants' failure to mitigate their damages, if any.

Respondent Baum denied the allegations set forth in the Statement of Claim. Baum made the following affirmative defenses: (1) the Statement of Claim fails to state a claim upon which relief can be granted; (2) Claimants' claims are barred by the applicable statutes of limitations; (3) Claimants' claims are barred by their ratification of any and all transactions in their accounts; (4) Claimants' claims are barred under the doctrines of waiver, estoppel and laches; (5) Claimants have failed to mitigate their alleged damages; (6) any losses suffered by Claimants were the result of economic and market conditions with respect to which Claimants assumed all risk of loss; (7) if there were any such fault on the part of Baum, which is denied, the comparative and/or contributory negligence of Claimants must be considered in determining the amount of damages, if any; (8) Baum exercised good faith with respect to Claimants' account and investments at all times; (9) Claimants cannot state any claim under the Missouri Securities Act or under the federal securities laws, because Baum did not know, and in the exercise of reasonable care, could not have known of any untrue statements or omissions of material fact, or any other basis of liability as alleged by Claimants; (10) Claimants' claim under the Missouri Merchandising Practices Act is barred by the fact that the securities they purchased were not "goods or services" as required by that statute, and because the statute is preempted by the state Blue Sky Act with respect to the regulation of securities; (11) Claimants' claims for fraud and misrepresentation are barred by the failure of any proof that Baum made any representation of an existing fact which was known to be false when made, or which was recklessly made, or that any basis for respondeat superior liability exists; (12) Claimants' claim for negligence fails because of the absence of any compelling evidence that Baum failed to use reasonable diligence in its supervision; (13) Claimants' claim for violation of NASD rules fail to state a claim because the NASD rules or any violation thereof do not establish any contractual theory and do not give rise to any private right of action upon which a claim may be based; and (14) Claimants' claim for breach of fiduciary duty fails because of the absence of any compelling proof that Baum possessed any fiduciary duties to Claimants and the absence of any proof that Baum possessed any fiduciary duties to Claimants and the absence of any proof of a breach of that duty.

RELIEF REQUESTED

Claimants Star Mining Co., Inc. ("Star Mining"), Five Star Mining Limited Partnership ("Five Star"), Larry J. Hiatt and Laura Hiatt, and John M. Hiatt requested an award for: actual damages in the Star Mining account from Dain Bosworth & Co., Inc. ("Dain") and George K. Baum & Co. ("Baum") in the amount of \$58,517; actual damages in the Five Star account from Dain in the amount of \$94,999 and from Baum in the amount of \$27,353; actual damages in the Larry and Laura Hiatt account from Dain in the amount of \$116,192 and from Baum in the amount of \$14,256; actual damages in the John Hiatt account from Dain in the amount of \$51,236 and from Baum in the amount of \$7,056; compensatory damages for the amount that the invested assets would now be worth had they been suitably managed in accordance with the Claimants' investment objectives, and/or interest as provided by statute; punitive damages; and costs and expenses, including attorneys' fees.

Respondent Dain Bosworth & Co., Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded its costs, expenses, and attorney fees incurred in defending this matter.

Respondent George K. Baum & Co. requested that an award be entered in its favor and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Claimants and Respondent George K. Baum & Co. reached a settlement prior to the hearing in this matter. As such, Respondent George K. Baum & Co. did not participate in the hearing.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Dain Bosworth & Co., Inc. is liable for, and shall pay, to the following Claimants as an award of compensatory damages: \$14,500.00 to Larry J. Hiatt, individually; \$2,000.00 to Larry J. and Laura Hiatt, on their joint tenancy account; and \$16,200.00 to John M. Hiatt, individually.
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, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were four (4) hearing sessions \times \$750 = \$3,000 in forum fees. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimants Star Mining Co., Inc., Five Star Mining Limited Partnership, Larry J. Hiatt and Laura Hiatt, and John M. Hiatt.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by respondent Dain Bosworth & Co., Inc.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by respondent George K. Baum & Co.

Additional forum fees in the amount of \$750 are assessed by the arbitrators against the Claimants.

Additional forum fees in the amount of \$1,500 are assessed by the arbitrators against Respondent Dain Bosworth & Co., Inc.

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

Dated:

Kurt A. Harper /s/
Kurt A. Harper
Public Arbitrator, Presiding Chair

March 20, 1997

Bill J. Alexander /s/
Bill J. Alexander
Public Arbitrator

March 21, 1997

Allan E. Abrams /s/
Allan E. Abrams
Industry Arbitrator

March 22, 1997