

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Robert P. McFadden,
Claimant,

v.

No. 96-01332

Edwin F. Prizer, III, and
Stifel, Nicolaus & Co.,
Respondents.

REPRESENTATION OF PARTIES

Claimant Robert P. McFadden ("**Claimant**") appeared on his own behalf.

Respondents Edwin F. Prizer, III ("**Prizer**"), and Stifel, Nicolaus & Co. ("**SNC**") (or jointly referred to as "**Respondents**") were represented by Rochelle S. Hall, Esq., St. Louis, Missouri.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 22, 1996.

Claimant's Submission Agreement was signed on March 13, 1996.

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

SNC's Submission Agreement was signed on April 16, 1996 by Forrest M. Smith, Esq., Vice President and Legal Counsel.

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

HEARING INFORMATION

A pre-hearing conference was held on October 9, 1996 for one (1) session.

The hearing was held on: November 21, 1996 for two (2) sessions.

The hearing was held in St. Louis, Missouri.

CASE SUMMARY

In his Statement of Claim, Claimant alleged that Respondents: Acted improperly and possibly illegally in the handling of his account, resulting in a loss of \$7,554.25, almost one half of the funds invested from his IRA, and their blatant attempt to cover this up with false statements to the authorities and threats of legal action against him based on misquotations of his statements; placed him in extremely risky and high priced security without the protection of stop loss orders Prizer

indicated that he would use in Claimant's account, and subsequently talking Claimant out of selling the stock when Claimant found out that he had not been "stopped out"; Respondents, in an attempt to cover up these actions, made blatantly false oral and written statements to Claimant, the SEC, the NASD, and the Office of Secretary of State of Missouri; Prizer made an unauthorized purchase in his account; the investment made by Prizer was unsuitable for Claimant; Prizer failed to provide Claimant with any written material about the stock purchased for his account; Prizer invested Claimant's money in a highly risky stock in which he and other members of his family invested; Respondents made material misstatements and omissions to Claimant; and Claimant had given Prizer Trading Authorization over the account and it was up to Prizer as an "expert" to have Claimant sign all of the proper papers. The allegations arose out of the purchase of International Game Technology ("IGT") stock for his account.

Unless otherwise admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that they did not: Cause inappropriate trading in Claimant's account; make any misrepresentations or omissions, or use improper sales practices; and make false statements to regulators or other authorities about Claimant's account. Respondents further denied that: Claimant directed Prizer to place a stop loss on his order of IGT stock; Claimant told Prizer that he "did not want to take unnecessary risks"; Claimant gave Prizer oral or written discretion to direct trades in his accounts and that Prizer exercised any such discretion whatsoever; Claimant was not given information about IGT stock; Prizer purchased IGT stock without Claimant's prior consent; Claimant requested a discretionary account and that Prizer used any discretion; they controlled or manipulated the trading in Claimant's account; Prizer's personal investment decisions influenced the advice he gave to the Claimant; the statements made by Prizer in his letter are false; and that they handled Claimant's or any of its other customer's accounts improperly.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award in the amount of the following: Actual cash loss of \$7,554.25; cost for medical treatment for depression \$8,586.87; quadruple punitive damages of \$45,697.35; and costs for the loss of time on writing and publishing a book and other medical costs associated with the loss in an amount to be determined by the arbitrators.

In their Answer, Respondents requested that they be dismissed from this action and that all of their costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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:

Claimant Robert P. McFadden's claims are, and each of them, denied with prejudice.

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 \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) regular sessions x \$500 and one (1) pre-hearing session x \$300 = \$1,300 in forum fees. Pursuant to §10332(b) 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 NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **refund** the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300 previously paid by SNC.

Additional forum fees in the amount of \$1,300 are assessed by the arbitrators against the Respondents.

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

Dated:

C.J. McEnery Jr.

/s/

November 21, 1996

C.J. McEnery Jr.

Public Arbitrator, Presiding Chair

Warren E. VanNorman

/s/

November 21, 1996

Warren E. Van Norman

Public Arbitrator

Bryan A. McDonald

/s/

November 21, 1996

Bryan A. McDonald

Industry Arbitrator