

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph Paul Smith and Lorraine Durnane

96-01344

Name of Respondent

Cruttenden Roth Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 27, 1996, Claimants Joseph Paul Smith and Lorraine Durnane ("Claimants"), who appeared Pro Se, alleged that Respondent Cruttenden Roth, Inc. ("Respondent") failed in his duty to notify them when their stock in Touchstone Software ("TS") decreased. Claimants further alleged that their broker, Richard Adler ("Adler"), was paid commissions and had a duty to notify them when their 1000 shares of TS dropped significantly in value. Claimants also alleged that they did not wish to own shares of TS but that Respondent threatened to stop selling them initial public offerings and secondaries unless they purchased regular stock such as TS. Claimants asserted that they are cautious investors who repeatedly advised Adler of their dissatisfaction with the price of TS as it was falling in value. Claimants contended that Adler should have sold the stock at an earlier date than he did and that due to the wrongdoing of the Respondent, they have suffered damages for which the Respondent should be held liable.

Respondent Cruttenden Roth ("Respondent"), Inc. through its representative and counsel John R. Loftus, Esq. of Keesal, Young & Logan of Long Beach, California, maintained that the Claimants never placed a loss limitation on TS or any other investment. Respondent further maintained that Claimant Joseph Paul Smith ("Smith") did not sell his shares of TS, even though he called the Respondent's office almost every business day for quotes and was aware that the price had declined. Respondent contended that Claimants were sent an October 1995 account statement showing TS had declined approximately 20%. Respondent further contended that Claimant's account indicated a pattern of short term trading for profit and never stated that their losses should be limited to 20%. Respondent also contended that Claimants expressly approved all transactions and in August 1995, had bought TS and sold it three days later making a \$1,500 profit. Respondent maintained that it committed no wrongdoing and requested that the claims against it be dismissed.

RELIEF REQUESTED

Claimants Joseph Paul Smith and Lorraine Durnane requested \$4,600.00 in actual damages.

Respondent Cruttendon Roth, Inc. requested that the claims of the Claimants be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed all documentation submitted by the parties concerning Claimants' motion requesting a default judgement in their favor as Respondent Cruttenden Roth, Inc.'s Answer was "not received by the deadline, June 11, 1996." The motion was denied.

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent's document request. The arbitrator denied the request.

The arbitrator considered and reviewed all documentation submitted by the parties concerning Claimants' document request. The arbitrator denied the request.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas E. Greef, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Joseph Paul Smith and Lorraine Durnane on March 25, 1996, and by the Respondent Cruttendon Roth, Inc. on June 7, 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. The claims of Claimants Joseph Paul Smith and Lorraine Durnane against Respondent Cruttenden Roth, Inc. are dismissed in their entirety.
2. All other requests for relief are denied.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Joseph Paul Smith and Lorraine Durnane, shall be retained by the NASD, Inc.

AFFIRMATION

I, **THOMAS E. GREEF**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Thomas E. Greef

DATE OF DECISION: September 13, 1996