

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Robert Jack Smith

and

No. 96-01371

Name of Respondent

Cantella & Company, Nutmeg Securities, LTD, Hubert Roche Securities Corp.,
Michael Valadimir Lipkin, David J. Grey, Alfred I. Fisher,
and Josh Shainberg

REPRESENTATION OF PARTIES

Robert Jack Smith ("**Claimant**") was represented by Tracy Pride Stoneman, Esquire of Susemihl & McDermott, P.C. located in Colorado Springs, Colorado.

Cantella & Company, Inc. ("**Respondent Cantella**") was represented by Peter M. Coppinger, Esquire of Gadsby & Hannah located in Boston, MA.

Respondent Nutmeg Securities, LTD. ("**Respondent Nutmeg**") was not represented by counsel.

Hubert Roche Securities Corp. ("**Respondent Hubert**") was not represented by counsel.

Michael Valadimir Lipkin ("**Respondent Lipkin**") was not represented by counsel.

David J. Grey ("**Respondent Grey** ") was not represented by counsel.

Alfred I. Fisher ("**Respondent Fisher**") was not represented by counsel.

Josh Shainberg ("**Respondent Shainberg**") was not represented by counsel.

CASE INFORMATION

Claimant filed the Statement of Claim on or about March 28, 1996. Claimant signed the Submission Agreement of Claimant on March 21, 1996.

Respondent Cantella filed the Statement of Answer and Affirmative Defenses and Crossclaim against Securities Planners on or about June 25, 1996. Respondent Cantella's Submission Agreement was signed by Gerald H. Powers, Senior Vice President of Respondent Cantella on June 14, 1996.

Respondent Hubert did not file a Statement of Answer.

Respondent Nutmeg did not file a Statement of Answer.

Respondent Shainberg filed a Statement of Answer on or about May 17, 1996.

Respondent Lipkin filed a Statement of Answer on or about May 17, 1996.

Respondent Grey did not file a Statement of Answer.

Respondent Fisher did not file a Statement of Answer.

HEARING INFORMATION

The Arbitration Panel held a hearing on November 7, 1996 in Dallas, Texas for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in wrongful conduct in connection with the sale of securities to him. Claimant's allegations include the following causes of action: misrepresentation, omission of material fact, failure to supervise, unauthorized trading, breach of fiduciary duty, negligence, breach of contract, and violations of additional federal and state securities laws..

Respondent Cantella denied the allegations set forth in the Statement of Claim. Respondents specifically stated affirmative defenses and made a cross claim against Securities Planners under the Clearing Agreement wherein Cantella agreed to act as clearing broker for Securities Planners.

RELIEF REQUESTED

Claimant requested an award in the amount of \$90,000 for actual damages, attorneys fees, pre-judgment and post-judgment interest at the maximum rate allowed by law, costs and expenses of pursuing the arbitration claim, a tax offset, and punitive damages.

Respondent Cantella denied the claims asserted against them and asked the panel to award them costs and attorneys' fees. Respondent Cantella asked the panel to find against Securities

Planners and/or its employed on the cross claim in the full amount of any judgment entered in favor of Claimant and against Cantella, plus costs and attorneys fees for defending the arbitration.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Lipkin has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Lipkin had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Lipkin did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Shainberg has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the Code. The undersigned arbitrators have also determined that Respondent Shainberg had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Shainberg did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code..

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Hubert has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the Code. The undersigned arbitrators have also determined that Respondent Hubert had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Hubert did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents David J. Grey had not been properly served with the Statement of Claim. Therefore, no action was taken by the panel as to Respondent Grey.

On October 10, 1996 Claimant settled his claims against Respondent Cantella & Co. Claimant also requested that Respondent Cantella & Company be dismissed with prejudice.

In its Answer Respondent Cantella & Co. attempted to plead a Cross claim against Securities Planners, Inc. Securities Planners was never properly served with this claim and this claim was not pursued by counsel. Therefore, no action was taken by the panel as to Securities Planners.

On June 10, 1996 Claimant withdrew its Claim against Respondent Nutmeg Securities, Inc. Therefore no action was taken by the panel as to Nutmeg Securities, Inc.

Prior to the hearing, counsel for Claimant requested that she be allowed to be present at the hearing via telephone rather than in person. No objections to this request were made and the panel granted her request. Claimant Robert Jack Smith appeared at the hearing in person.

Prior to the hearing, a request for a postponement of the hearing was made by Herbert M. Jacobi, Esquire ("Jacobi") on behalf of Respondent Fischer. The panel denied the request and ruled that Jacobi may be present at the hearing via telephone.

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). That Respondents Hubert Rosche Securities Corp., Michael Valadimir Lipkin, and Josh Shainberg are jointly and severally liable for and shall pay Claimant Robert Jack Smith compensatory damages in the amount of \$50,000 and interest thereon at 10% beginning to accrue May 11, 1995;

(2). That Respondents Hubert Rosche Securities Corp., Michael Valadimir Lipkin, and Josh Shainberg are jointly and severally liable for and shall pay Claimant Robert Jack Smith attorneys fees of \$7,500.00 under the Texas Securities Act;

(3). That other than forum fees which are addressed below, all other relief requested is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$500 = \$1000 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a prehearing 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 **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

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 \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Respondent Cantella & Co.

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 Respondent Cantella & Co.

There were two (2) hearing sessions for a total due of \$1000 in hearing session fees. Claimant has previously deposited \$500 and Respondent had previously deposited \$600 in hearing session fees. Claimant Robert Jack Smith shall be reimbursed by the NASD Regulation Inc. Office of Dispute Resolution \$100 remaining forum fees.

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

Dated:

/s/ Jonathan A. Pace

2/14/97

Jonathan A. Pace
Public Arbitrator, Presiding Chair

/s/ R. Theodore Moock

2/19/97

R. Theodore Moock, Jr.
Public Arbitrator

/s/ George S. Thumlert

1/30/97

George S. Thumlert
Industry Arbitrator