

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

John S. Lovett

and

96-01632

Name of Respondent

Investors Associates, Inc.

Michael Lomec

## **REPRESENTATION OF PARTIES**

John S. Lovett ("Claimant") was represented by James F. Roegge, Esq. and Jodi Mandel-Chall, Esq., Meagher & Geer, Minneapolis, Minnesota.

Investors Associates, Inc. ("Respondent Investors") was represented by M. David Sayid, Esq., Sayid and Associates, Hackensack, New Jersey.

Michael Lomec ("Respondent Lomec") did not appear at the hearing.

## **CASE INFORMATION**

The Statement of Claim was filed on or about April 15, 1996. Amendment to Statement of Claim was filed on or about May 9, 1996. Submission Agreement of Claimant John S. Lovett was signed on April 5, 1996.

Statement of Answer was filed by Respondent Investors Associates, Inc. on or about July 6, 1996.

## **HEARING INFORMATION**

A pre-hearing conference was held on November 15, 1996 for one (1) session.

The hearing was held on Monday, January 27, 1997 in Minneapolis, Minnesota for a total of two (2) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents engaged in fraudulent, dishonest and unlawful conduct. Specifically, Claimant alleged that Respondent Lomec engaged in excessive trading with his accounts in an attempt to generate commission revenue in complete disregard of the Claimant's investment objectives. It was further alleged that Respondent Lomec engaged in many transactions without the consent of the Claimant. Claimant alleged that the actions of Respondents constituted:

- ▶ violations of federal and state securities laws;
- ▶ fraudulent and deceptive practices under Minn. Stat. 80A.03 and Minn. Rules 2875.1050A;
- ▶ violation of the Minnesota Consumer Fraud Act;
- ▶ common law fraud;
- ▶ negligent misrepresentation;
- ▶ breach of fiduciary duty under the common law and Minn. Stat. 45.026; and
- ▶ negligence.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that upon information and belief, all of the trades executed in the Claimant's accounts were authorized, all disclosed to the Claimant by Respondent Lomec prior to being transacted. It was further stated that some of the trades were unsolicited transactions and the commissions earned were all disclosed and in full accordance with industry rules and regulations.

Respondent Lomec did not file a responsive pleading.

### **RELIEF REQUESTED**

Claimant requested an award of actual damages in an amount in excess of \$21,000 which is accruing interest monthly; interest at the market rate on all sums awarded; reasonable attorneys' fees, costs and expenses pursuant to Minn. Stat. §§80A.23 and 8.31 subd. 3(a) and §325F.69; punitive damages in the amount of \$250,000; and for such other and further relief as is just and equitable under the circumstances.

Respondent Investors requested that the claims asserted against it be denied in their entirety and that it be awarded the costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$5,000, incurred in defending this baseless claim. Respondent Investors also requested that the arbitration panel grant it such other and further relief as justice and equity require.

### **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 Lomec 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 Lomec 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 Investors Associates, Inc. did not file with the 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 NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

By letter dated January 24, 1997, Claimant withdrew without prejudice the claims asserted against Prudential Securities, Inc.

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 the 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. Respondents Investors Associates, Inc. and Michael Lomec shall be and hereby are jointly and severally liable for and shall pay to the Claimant John S. Lovett the sum of \$21,358 (twenty one thousand three hundred fifty eight dollars).
2. Interest at the rate of 3% per annum is awarded on the above stated sum from and inclusive of December 16, 1994 to and inclusive of the date the above stated sum is paid in full.
3. Respondents Investors Associates, Inc. and Michael Lomec shall be and hereby are jointly and severally liable for and shall pay to the Claimant John S. Lovett the sum of \$24,000 (twenty four thousand dollars) as attorneys' fees and costs incurred in this matter.
4. Respondent Michael Lomec shall be and hereby is liable for and shall pay to the Claimant John S. Lovett the sum of \$16,000 (sixteen thousand dollars) as punitive damages.
5. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.


### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and two (2) sessions x \$750 = \$1,800 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, the 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 the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant John S. Lovett. Respondent Investors Associates, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,050 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.


Dated:

  
Casandra Mihalchick, Esq.  
Public Arbitrator, Presiding Chair

1-27-97

  
John S. Hoyt, Jr., Ph.D.  
Public Arbitrator

1-27-97

  
Jacques E. Foust  
Industry Arbitrator

1-27-97