

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Nazih A. Daniel

96-01655

Name of Respondents

Commonwealth Associates
John Michael Black, Jr.

REPRESENTATION

Claimant Nazih A. Daniel ("Claimant") was represented by William L. Auten, Esq., Charlotte, NC.

Respondents Commonwealth Associates ("Commonwealth") and John Michael Black, Jr. ("Black") were represented by J.P. Wilson, General Counsel, Commonwealth Associates, New York, NY.

CASE INFORMATION

Claimant's Statement of Claim was filed April 16, 1996.

Claimant's Uniform Submission Agreement was signed March 27, 1996.

The Joint Statement of Answer of Commonwealth and Black (collectively "Respondents") was filed December 5, 1996.

Commonwealth's Uniform Submission Agreement was signed October 16, 1996.

Black's Uniform Submission Agreement was signed December 10, 1996.

HEARING INFORMATION

Prehearing Date/Sessions: December 6, 1996/one session

Hearing Dates/Sessions: December 16, 1996/two sessions
December 17, 1996/two sessions
January 14, 1997/two sessions

Hearing Location: South Park Suite Hotel
Charlotte, NC

CASE SUMMARY

Claimant alleged, among other things, that Respondents induced Claimant to authorize investments in manifestly risky and unsuitable OCT issues, without any diversification, and without proper regard for Claimant's interests as well as personal and financial circumstances. Claimant alleged that Respondents

persuaded Claimant to authorize a transaction for the purchase of a single OTC issue, on margin, which placed virtually all of Claimant's life savings at risk. Claimant alleged that he is a Jordanian national, newly located in the United States, and totally unsophisticated in securities investments. Claimant alleged that Respondents induced Claimant to purchase OTC issues through a series of false and misleading representations and intentionally omitted information necessary for Claimant to make a knowledgeable decision. Claimant alleged that he reasonably relied upon Respondents' misrepresentations of material information, to his detriment, because Respondents held themselves out as experienced in securities investments.

Claimant alleged that Black described and offered to engage in fraudulent order placements and a market manipulation scheme. Claimant alleged that on at least one OTC issue, Black informed Claimant that Black possessed non-public insider information. Claimant alleged that Black failed to disclose to Claimant that because Commonwealth was a market maker in the OTC issues that Black was promoting, that Black was profiting from substantial premium commissions on such transactions. Claimant alleged that Commonwealth negligently failed to adequately supervise Black in the management of Claimant's account. Claimant alleged that Commonwealth is liable for the wrongs committed by Black by reason of the doctrine of respondeat superior.

Respondents categorically denied any and all allegations and claims involving what, in effect, were market losses suffered by Claimant in investments effected from August 1993 to October 1994 in the seven (7) companies identified in his Statement of Claim. Respondents maintained that Claimant has failed to state a cause of action given that all trades were appropriate and effected in accordance with Claimant's investment objectives, Claimant's investment experience and Claimant's rather high tolerance for risk. Respondents maintained that Claimant had the financial resources to bear the risk of loss involved. Respondents maintained that Claimant authorized and approved all transactions prior to execution. Respondents maintained that Claimant was deemed to be fairly sophisticated and controlled the brokerage account at issue at all times relevant. Respondents maintained that Claimant was informed of all facts which were important to his investment decisions. Respondents maintained that Claimant's account was properly managed and that Respondents engaged in fair dealing at all times. Respondents maintained that Commonwealth properly supervised Black at all times, pursuant to a reasonable system of policies and procedures reasonably designed and effectively implemented to prevent and detect sales practice violations and other alleged unlawful conduct.

Respondents maintained that any losses suffered by Claimant have no causal relationship with any action committed by, or legally attributable to Respondents. Respondents maintained that Claimant did not rely upon any representations made by Respondents to his detriment. Respondents also raised the affirmative defenses of a failure to mitigate damages, laches, ratification, affirmance and waiver, estoppel and the applicable statute of limitations. Therefore, Respondents maintained that any losses suffered by Claimant were caused, in whole or in part, by Claimant's own negligence and market forces.

RELIEF REQUESTED

Claimant requested relief in the amount of \$85,000.00, with interest; punitive damages in the amount of \$50,000.00; reasonable attorney's fees as well as the costs and expenses incurred as a result of this arbitration.

Respondents requested that the Statement of Claim be dismissed in its entirety, with prejudice; and that all costs and expenses of this arbitration, including attorney's fees, be assessed to 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 originals remain on file with the NASD.

The panel considered Respondents' Request To File a Late Answer and Claimant's Motion to Bar Respondents from Presenting Any Defenses, as well as the Responses to each, and granted Respondents' Request to File a Late Answer and denied Claimant's Motion to Bar Respondents from Presenting Any Defenses.

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 Commonwealth Associates and John Michael Black, Jr. are jointly and severally liable to and shall pay to Claimant the sum of \$82,000.00 plus eight percent (8%) interest, compounded monthly, from January 1, 1994 until the award is paid.
2. Respondent Commonwealth Associates is liable to and shall pay to Claimant the sum of \$40,000.00 in punitive damages.
3. Respondent John Michael Black, Jr. is liable to and shall pay to Claimant the sum of \$10,000.00 in punitive damages.
4. Respondents Commonwealth Associates and John Michael Black, Jr. are jointly and severally liable to and shall pay to Claimant the filing fee of \$200.00.
5. Respondents Commonwealth Associates and John Michael Black, Jr. are jointly and severally liable to and shall reimburse to Claimant the hearing session deposit of \$750.00.
6. Each party shall bear their own costs and expenses except as specified in this section of the award and in the forum fees section of the award
7. Any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 prehearing session x \$300.00	=	\$ 300.00
6 sessions x \$750.00 =		\$4,500.00
Total Forum Fees		\$4,800.00

Forum Fees are assessed to Respondents Commonwealth Associates and John Michael Black, Jr. jointly and severally. Respondents are to receive credit for the \$750.00 reimbursed to Claimant for the hearing

session deposit previously submitted to the NASD Regulation. Therefore, Respondents have a net assessment due to the NASD Regulation of \$4,050.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

1-22-97

C. Marcus Harris

C. Marcus Harris, Chairman
Public Arbitrator

John F. Snyder
Public Arbitrator

F. John Herrmann
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 28, 1997

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Fees are payable to the National Association of Securities Dealers Regulation, Inc.

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