

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Carl Schramm

96-02039

Name of Respondents

G. Bradley Taylor
Chatfield Dean & Co., Inc.

Name of Third Party Respondent

Sanford Earl Williams

REPRESENTATION

For Claimant: Stephen Murphy, Esq. of the law firm of Pino & Dicks, Longwood, FL.

For Respondents Chatfield Dean & Co., Inc. ("Chatfield Dean") and G. Bradley Taylor ("Taylor"): Christa Taylor, Esq., in-house counsel at Chatfield Dean & Co. Inc.

For Third Party Respondent Sanford Earl Williams ("Williams"): Eugene Michael Kennedy, Esq., Fort Lauderdale, FL.

CASE INFORMATION

Statement of Claim filed: May 13, 1996.

Claimant's Submission Agreement signed on: April 17, 1996.

Joint Statement of Answer and Third Party Claim filed by Respondents on: June 25, 1996.

Statement of Answer filed by Taylor on: July 1, 1996.

Respondent Chatfield Dean & Co., Inc's Submission Agreement signed on: June 21, 1996.

Statement of Answer of Third Party Respondent filed on: July 15, 1996.

The Respondent Taylor and Third Party Respondent Williams did not execute Submission Agreements as required pursuant to Section 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

Four hearing sessions were conducted in this matter on February 4 and 5, 1997 in Tampa, Florida.

CASE SUMMARY

Claimant alleged that he was 76 years old when he filed the Statement of Claim and was a retired Navy pilot who had never bought or sold stock and had never owned a stock brokerage account. Claimant next alleged that when he started doing business with the Respondents he was recovering from a severe stroke and the Respondents took advantage of the Claimant's inexperience concerning securities and his weakened condition. Claimant next alleged that the Respondents traded the Claimant's account with securities not suitable to the Claimant's objectives and investment experience. Claimant further alleged that the Respondents engaged in short-term trading in the Claimant's account which was not suitable and the Respondents misrepresented repeatedly the amount of risk involved in investments that the Respondents were buying and selling in the Claimant's account and they repeatedly represented to the Claimant that the securities they purchased in the account were all suitable when they were allegedly not suitable. The Claimant next alleged that the Claimant's account was not suitably diversified and the resulting concentration in the Claimant's account was itself unsuitable. Claimant further alleged that Mr. Taylor and Chatfield Dean charged the Claimant more than (10%) percent of the value of his account in commissions and they earned these commissions by managing the Claimant's account to a negative 37% return on an annualized basis thereby violating Florida securities laws and recklessly managing the Claimant's account. Claimant next alleged the following: the Respondents were negligent; Respondent Chatfield Dean failed to properly supervise its employees; the Respondents breached the fiduciary duty owed to the Claimant; and, the Respondents engaged in fraud.

Respondents Chatfield Dean and Taylor maintained that Respondent Taylor was not the Claimant's account executive at Chatfield Dean but rather the Claimant's account executive was Third Party Respondent Sanford Earl Williams. Respondents further maintained that Williams filled out the new account card and subsequently updated the account card to show higher income and net worth and to add long term growth and speculation. Respondents further maintained that Mr. Taylor never even spoke to the Claimant and that "all negotiations and transactions" were handled by Third Party Respondent Sanford Williams. Next, the Respondents denied that the securities sold to Claimant were unsuitable given his investment objectives. Respondents next maintained that when Chatfield Dean's Compliance department noted the frequency of trading in Claimant's account, it sent a letter to Claimant asking whether Claimant was aware of the risks and frequency of trading and he replied that he was. Respondents denied that they violated Florida securities laws, acted in a negligent fashion, breached any fiduciary duty to Claimant and Respondent Chatfield Dean denied that it failed to properly supervise its employees.

Respondent Chatfield Dean asserted a third party claim against Sanford Earl Williams alleging that when they hired Williams he signed an employment agreement whereby he promised to

abide by all laws, rules, regulations, and company policies with regard to serving customers and failure to do so required Williams to indemnify Chatfield Dean for all losses suffered due to such failure. Respondent Chatfield Dean then maintained that if they are liable to the Claimant for any damages arising out of the transactions executed by Williams, Williams must reimburse Chatfield Dean for such losses, together with the costs of the action.

Third Party Respondent Williams maintained that, in keeping with the Customer/Claimant's account statements, that Taylor was, in fact, the Claimant's broker, that Williams was merely a clerical assistant at all times material to the claim, and that the transactions comprising the basis of the claim were part of a "deal" brought to Chatfield Dean by Taylor and personally managed by Taylor at Chatfield Dean. Third Party Respondent Williams further maintained that Taylor spoke frequently to the Claimant, particularly regarding the securities comprising the basis of the Statement of Claim as a matter of actual fact, contrary to the Answer of the Respondents Chatfield Dean and Taylor that Taylor never once spoke to the Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$106,237.00 which included but is not limited to rescissionary damages and all legal interest due and accruing on such damages under Chapter 517, Florida Statutes or the Well Managed Account Measure; damages for future losses in the sum of \$11,868.88; return of commissions earned in the sum of \$19,575.00; pre-award and post-award interest from the date of the original investment, calculated at the maximum rate allowed by law; costs of arbitration, including all fees, expenses of expert witness, and other costs deemed fair and reasonable; attorneys' fees pursuant to Section 517.211 (b), and the inherent power of the arbitrators to fully compensate Claimant by a "make-whole award;" and, such other relief as the arbitrators deemed appropriate under the circumstances.

Respondent Chatfield Dean and Taylor requested a dismissal of all claims against them. Respondent Taylor further requested that all references to this arbitration proceeding be expunged from his CRD record. Respondent Chatfield Dean further requested that the arbitration panel order Sanford Earl Williams to reimburse Chatfield Dean any amounts it may be ordered to pay to Claimant, together with costs incurred by Chatfield Dean in this action.

Third Party Respondent Williams requested a dismissal of the third party claim and further requested that he be reimbursed his costs and reasonable attorney's fees incurred in defending the claim.

OTHER ISSUES CONSIDERED & DECIDED

During the hearing, the arbitration panel was informed that the Respondent Chatfield Dean was withdrawing with prejudice all claims against Third-Party Respondent Sanford Earl Williams.

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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Chatfield Dean be and hereby is liable and shall pay to the Claimant the sum of \$106,237.00 plus simple interest at the Florida statutory rate from the date of decision until the date of payment of the Award.
2. The Respondent Chatfield Dean be and hereby is liable and shall pay to the Claimant the sum of \$19,575.00 representing reimbursement of the commissions paid by the Claimant to Chatfield Dean.
3. All claims against the Respondent Bradley Taylor be and hereby are dismissed in all respects.
4. All references to this arbitration proceeding shall be expunged from the CRD record of Respondent Taylor.
5. The Respondent Chatfield Dean be and hereby is liable and shall pay to the Claimant the sum of \$950.00 representing reimbursement of the hearing session deposit and claim filing fee previously paid by the Claimant to the NASD.
6. The Respondent Chatfield Dean be and hereby is liable and shall pay to the Claimant his attorneys' fees as determined by a court of competent jurisdiction.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the panel has assessed Forum Fees in the sum of \$3,000.00 (4 sessions x \$750.00) as follows:

1. Respondent Chatfield Dean is hereby assessed \$3,000.00 for which the NASD shall retain the \$750.00 previously deposited by the Claimant and the \$750.00 previously deposited by Respondent Chatfield Dean in partial satisfaction thereof leaving a balance due to the NASD in the sum of \$1,500.00.
2. The NASD shall retain the claim filing fees previously paid by the Claimant and the Respondent Chatfield Dean to the NASD.

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

Concurring Arbitrators' Signatures

Name

/S/
R. Andrew Duncan, Esq.

/S/
Richard J. Jones, III, Esq.

/S/
Joseph E. Meyer

Date of Decision: March 17, 1997..