

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Robert L. McDonald

and

Case Number: 96-02359

Name of Respondents

Vision Investment Group,
Paul Caruso,
Mike Corulla, and
Bill Battista

REPRESENTATION OF PARTIES

Claimant Robert L. McDonald ("Claimant") was represented by David J. Hase, Esq. of Cook & Franke located in Milwaukee, Wisconsin.

Respondents Mike Corulla ("Corulla") and Bill Battista ("Battista") were represented by Darren Lampert, Esq. of Lampert & Lampert located in New York, New York.

Respondents Vision Investment Group and Paul Caruso ("Caruso") did not appear and were unrepresented.

Respondent Cantella & Company, Inc. ("Cantella") was dismissed with prejudice from this matter prior to hearing.

CASE INFORMATION

The Statement of Claim was filed on or about June 3, 1996.

Claimant's Submission Agreement was signed on May 23, 1996.

The Joint Statement of Answer of Respondents Corulla and Battista was filed on or about July 3, 1996.

Respondent Corulla's Submission Agreement was signed undated.

Respondent Battista's Submission Agreement was signed undated.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondents Vision Investment Group or Paul Caruso filed a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

The Hearing in this matter was held on January 30, 1997 for two (2) sessions in Milwaukee, Wisconsin.

CASE SUMMARY

Claimant represented that Respondent Caruso was the President of Respondent Vision Investment Group, and that Respondents Corulla and Battista were employed by Vision Investment Group.

Claimant alleged that, on November 10, 1995, Claimant purchased 10,000 shares of Auxer Industries stock at \$7.50/share from Respondent Corulla of Vision Investment Group. Claimant contended that Respondent Corulla told Claimant that Claimant could not lose money on the stock and that Corulla would put a stop-loss on it at \$8.75. Claimant asserted that, on November 17, 1995, Claimant requested that the stock be sold, but that Respondent Corulla convinced Claimant to wait. Claimant maintained that, on November 20th, Respondent Corulla advised Claimant that the stock had sold for \$9.00/share and that Claimant would receive a check from Cantella & Co. on November 21st. Claimant alleged that, when no check arrived, he called Corulla and was told that the stock had not been sold. Claimant contended that he also spoke with Respondent Battista of Vision Investment Group who advised Claimant that Battista would sell 2,500 shares that day. Claimant asserted that on December 4, 1995, Claimant spoke with Respondent Caruso and was advised the stock was at \$4.75-\$5.00 and that Caruso would watch it for a few days. Claimant also maintained that Caruso told Claimant he could get his money back through arbitration. Claimant alleged that he contacted Cantella to obtain Claimant's stock certificates. Upon contacting Cantella, Claimant contended that he was advised that Claimant's

Physicians Computer Network stock had been sold and that additional Auxer Industries stock was purchased with the proceeds without Claimant's authorization.

Respondents Corulla and Battista denied all liability to Claimant in the Joint Statement of Answer. Respondents Corulla and Battista alleged that they had no involvement with the transactions at issue. Respondents Corulla and Battista contended that they never spoke with Claimant or transacted any purchases or sales for Claimant's account. Respondents Corulla and Battista asserted that Respondent Battista was never employed by Vision Investment Group.

Respondents Corulla and Battista asserted various affirmative defenses, including : that Corulla never executed any trades in Claimant's account; that Battista was never employed by Vision Investment Group; that all losses, if any, incurred by Claimant were due to market forces; that Claimant failed to exercise due diligence; that Claimant never objected to the transaction at issue, that Claimant has failed to state a Claim upon which relief can be granted; and that Claimant ratified all transactions at issue.

RELIEF REQUESTED

Claimant requested an award of damages in the amount of \$90,775.

Respondent Corulla and Battista requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the undersigned arbitrators have determined that Respondents Vision Investment Group and Paul Caruso have 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 Respondents Vision Investment Group and Paul Caruso have 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.

Respondents Vision Investment Group and Paul Caruso did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10301 of the Code and are bound by the determination of the arbitration panel on all issues submitted.

Pursuant to the agreement of the parties, Respondent Battista appeared at the hearing via telephone.

The parties present at the hearing 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel finds that, with respect to Respondents Vision Investment Group and Paul Caruso, that both Respondents, by their authorized agents, sold securities to Claimant Robert L. McDonald by means of fraudulent representations. The panel finds that the Claimant reasonably relied upon those representations to his detriment in making the purchase of the subject securities and that such actions constitute common law fraud under the law of the State of Wisconsin. The panel finds that Respondent Vision Investment Group's authorized agents, acting within the scope of their authority, engaged in unauthorized sales and purchases of securities in Claimant's account. The panel finds that Respondent Vision Investment Group's authorized agents, acting within the scope of their authority, failed and neglected to sell the same securities upon Claimant's lawful direction to do so, and did so for the purpose of perpetuating said fraud;
2. That Respondents Vision Investment Group and Paul Caruso are jointly and severally liable for and shall pay to Claimant Robert L. McDonald compensatory damages in the amount of Seventy Eight Thousand Eight Hundred Twenty Seven Dollars and Sixty Four Cents (\$78,827.64), plus interest on this sum at the Wisconsin legal rate, which shall begin to accrue on January 20, 1997 and shall continue to accrue until the date this award is paid in full;

3. That Respondents Vision Investment Group and Paul Caruso are jointly and severally liable for and shall pay to Claimant Robert L. McDonald an award of punitive damages in the amount of Eighty Thousand Dollars and No Cents (\$80,000.00), which the panel finds is commensurate with the grievousness of the acts and which bear a reasonable relationship to compensatory damages. The panel find that these actions were taken wantonly and maliciously and in violation of Respondents' duties to Claimant. The panel also finds that an award of punitive damages is allowed under the common law of the State of Wisconsin;
4. That all claims against Respondents Mike Corulla and Bill Battista are hereby dismissed in their entirety with prejudice;
5. That other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
6. That any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 per pre-hearing session, if any. There were two (2) hearing sessions x \$500 = \$1,000 in forum fees. Total forum fees = \$1,000. 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 previously deposited by the Claimant Robert L. McDonald. NASD Regulation, Inc. Office of Dispute Resolution shall refund the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant Robert L. McDonald.

Respondents Vision Investment Group and Paul Caruso are assessed and shall pay to NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,000.

Respondent Vision Investment Group is assessed and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the §10333 Member Surcharge in the amount of \$300.

Respondent Cantella & Company, Inc. is assessed and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the §10333 Member Surcharge in the amount of \$300.

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

Concurring Arbitrators' Signatures

\s\ Stanley H. Michelstetter, II, Esq.
Stanley H. Michelstetter, II, Esq.
Chairperson
Public Arbitrator

March 6, 1997
Dated:

\s\ Thomas H. Sutter, Esq.
Thomas H. Sutter, Esq.
Panelist
Public Arbitrator

March 6, 1997
Dated: Thomas H. Sutter, Esq.
Panelist
Public Arbitrator

\s\ Jeffrey F. Freiburger
Jeffrey F. Freiburger
Panelist
Industry Arbitrator

March 15, 1997
Dated: Jeffrey F. Freiburger

For NASD Regulation use only:
Date award served on the parties: March 20, 1997