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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Kim D. Pavlik,

Claimant,

and

No. 96-02786

*Nationwide Securities Corp.,

Southwest Securities, Inc.,

Peter C. Restivo,

Thomas DeCeglie,

Kevin B. Williams,

Joseph R. Huff,

Respondents.

REPRESENTATION OF PARTIES

Claimant Kim D. Pavlik ("Claimant") appeared pro se.

Respondent Nationwide Securities Corp. ("Nationwide") was represented by Kevin Williams. Respondent Nationwide was previously represented by Jonathan A. Pace, Esq. of Dallas, Texas.

Respondent Southwest Securities, Inc. ("Southwest") was represented by Will Montgomery, Esq. of Jenkins & Gilchrist located in Dallas, Texas.

Respondent Peter C. Restivo ("Restivo") appeared pro se.

Respondent Thomas DeCeglie ("DeCeglie") appeared pro se.

Respondent Kevin B. Williams ("Williams") appeared pro se. Respondent Williams was previously represented by Jonathan A. Pace, Esq. of Dallas, Texas.

Respondent Joseph R. Huff ("Huff") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about July 24, 1996.

Claimant's Submission Agreement was signed on June 22, 1996.

Respondent Nationwide's Statement of Answer was filed on or about August 30, 1996.

Respondent Nationwide's Submission Agreement was signed on August 20, 1996 by Kevin B. Williams, Chief Financial Officer of Nationwide Securities Corporation.

Claimant's Response to the Statement of Answer was filed on or about September 18, 1996.

Respondent Southwest's Motion to Dismiss and Answer was filed on or about August 20, 1996.

Respondent Southwest's Submission Agreement was signed on August 19, 1996 by Jerome S. Wade, Vice President and General Counsel of Southwest Securities.

Claimant's Response to the Statement of Answer was filed on or about September 9, 1996.

Respondent Restivo's Statement of Answer was filed on or about September 13, 1996.

Respondent Restivo's Submission Agreement was signed on September 10, 1996.

Claimant's Response to the Statement of Answer was filed on or about September 18, 1996.

Respondent DeCeglie's Statement of Answer was filed on or about September 5, 1996.

Respondent DeCeglie's Submission Agreement was signed on September 3, 1996.

Claimant's Response to the Statement of Answer was filed on or about September 18, 1996.

Respondent Williams' Statement of Answer was filed on or about August 30, 1996.

Respondent Williams' Submission Agreement was signed on August 20, 1996.

Claimant's Response to the Statement of Answer was filed on or about September 18, 1996.

Respondent Huff's Statement of Answer was filed on or about August 30, 1996.

Respondent Huff's Submission Agreement was signed on August 23, 1996.

Claimant's Response to the Statement of Answer was filed on or about September 18, 1996.

HEARING INFORMATION

The hearing was held on January 9, 1997 for one (1) session; August 28, 1997 for three (3) sessions; and August 29, 1997 for two (2) sessions. The hearing location was Southfield, Michigan.

CASE SUMMARY

Claimant alleged that he opened a securities account with Respondent Nationwide after a cold call from Respondent Restivo. Claimant contended that after the account was opened, all Respondents engaged in common conduct which consisted of the following: the unauthorized purchase and sale of securities for Claimant's account; failure and refusal to provide Claimant with basic account information on a timely basis; refusal to follow Claimant's directions with respect to the purchase and sale of securities in the account and the transfer of money and securities into and out of the account; the active manipulation of the market price of securities held in the account; the misrepresentation of market price of securities held in the account; the active manipulation of facts covering specific securities in the account; and the failure to disclose risks associated with ownership of high-risk securities such as were recommended and sold to Claimant. Claimant based the Statement of Claim on the following legal theories and principals: breach of contract; common law fraud; conspiracy; promissory estoppel; conversion; negligence; malpractice; breach of fiduciary duty; breach of federal securities law; breach of Michigan securities law; and violation of Michigan Consumer's Protection Law.

Respondent Nationwide denied all liability to Claimant in its Statement of Answer. Respondent Nationwide contended that no specifics are set forth in the Statement of Claim as to what, if any, trades were unauthorized, how the damages are calculated, what misrepresentations were made or any other specifics. Respondent Nationwide also asserted that no facts are set forth to sustain a claim of churning.

Respondent Southwest also denied all liability to Claimant in its Statement of Answer and Motion to Dismiss. Respondent Southwest alleged that the Statement of Claim was based almost exclusively upon the conduct of Nationwide and its employees, not the conduct of Southwest. Respondent Southwest contended that it only provided clearing services to Nationwide and did nothing more than clear trades for the brokers Claimant primarily dealt with on his account. Claimant asserted that the law is clear that a clearing firm such as Southwest is not liable for the fraud of an introducing broker such as Nationwide.

Respondents Williams and Huff denied all liability to Claimant in their respective Statements of Answer. Respondents Williams and Huff alleged that, as officers of Nationwide, they made no trades on behalf of Claimant and never spoke to Claimant at any time. Respondent Williams and Huff contended that they were not directly responsible for supervising any of the other brokers named in the claim.

Respondent Restivo also denied all liability to Claimant in his Statement of Answer. Respondent Restivo alleged that the Statement of Claim fails to reference a single, specific event or occurrence wherein any of the Respondents engaged in improper activities.

Respondent DeCeglie denied all liability to Claimant in his Statement of Answer. Respondent DeCeglie contended that he never established, maintained or solicited an account on behalf of the Claimant at any time. Respondent DeCeglie asserted that he never solicited, accepted, executed or facilitated a transaction on behalf of the Claimant.

RELIEF REQUESTED

Claimant requested an award of \$65,000 as out-of-pocket loss; interest at 12%; costs; attorney fees; exemplary and punitive damages; additional damages; and rescission of all transactions.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Southwest's Motion to Dismiss was denied without prejudice prior to hearing. During the course of the hearing, Respondent Southwest renewed its Motion to Dismiss. After careful consideration, the undersigned arbitrators granted Respondent Southwest's Motion to Dismiss prior to the close of the hearing.

Respondents Nationwide and Williams failed to appear at the hearing. Upon review of the file, the undersigned arbitrators have determined that Respondents Nationwide and Williams have received due notice of the hearing as required under §10315 of the NASD Code of Arbitration Procedure ("Code") and that arbitration of the matter would proceed pursuant to §10318 of the Code.

The parties who appeared 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 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 Nationwide Securities Corp. and Kevin B. Williams are jointly and severally liable for and shall pay to Claimant Kim D. Pavlik damages in the amount of Eighty Five Thousand Dollars and No Cents (\$85,000.00);
- (2) Respondents Southwest Securities, Inc., Joseph R. Huff, Peter C. Restivo and Thomas DeCeglie are hereby dismissed from this matter with prejudice; and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) hearing session x \$500 = \$3,000 in forum fees. Pursuant to § 10332(b) of the Code, 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 Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Southwest Securities.

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Pursuant to § 10332(c) of the Code, Respondents Nationwide Securities Corp. and Kevin B. Williams are jointly liable for and shall pay all forum fees incurred in this matter in the amount of \$3,000.

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

Concurring Arbitrators' Signatures

/s/ Gordon F. Knight, Ph.D
Gordon F. Knight, Ph.D
Chairperson
Public Arbitrator

September 18, 1997
Dated:

/s/ Howard F. Lynn
Howard F. Lynn
Panelist
Public Arbitrator

September 19, 1997
Dated:

/s/ Harold I. Gach, Esq.
Harold I. Gach, Esq.
Panelist
Industry Arbitrator

September 19, 1997
Dated:

For NASD use only:
Date Award was served on the parties: September 23, 1997