

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

James Cassettari

Case No. 96-03338

Names of Respondents

S.D. Cohn and Co., Inc.
Bernard Musmand

REPRESENTATION OF PARTIES

Claimant James Cassettari appeared pro se.

For Respondent Bernard Musmand (Musmand): Gary Miller, Esq. of the law firm of Stein, Rosenberg & Winikoff, P.A., Fort Lauderdale, Florida.

For Respondent S.D. Cohn and Co., Inc. (Cohn): Eric Rosenberg, Esq. of the law firm of Zeigler Zeigler & Altman, New York, NY until his withdrawal on May 21, 1997; then by Charles O'Rourke, Esq., Garden City, NY until his withdrawal on October 10, 1997; and, thereafter by Robert Shattles of S. D. Cohn and Co., Inc.

CASE INFORMATION

Statement of Claim was filed on August 5, 1996. On October 10, 1997 it was amended to add Musmand as a Respondent. Claimant's Submission Agreement was signed on July 30, 1996.

Statement of Answer with a Third Party Claim against Musmand was filed by Respondent Cohn on September 11, 1996. Respondent Cohn's Submission Agreement was signed on September 9, 1996 by Robert Shattles.

Statement of Answer to the Third Party Claim was filed by Respondent Musmand on November 18, 1996. Musmand's Submission Agreement was signed on November 18, 1996. Musmand did not file a separate Answer to the amended claim.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-03338
Award Page 2 of 4

HEARING INFORMATION

The evidentiary hearing was held on February 20, 1998 in Fort Lauderdale, Florida for a total of two sessions.

CASE SUMMARY

Claimant alleged the following: Claimant contacted Respondent Musmand after hearing Incentive Design Group ("IDG") stock being touted by Musmand and radio talk-show host Jerry Wenger. Respondents, through Musmand, made misrepresentations of material facts and omitted to state material facts in order to induce him to purchase the stock. In reliance on the misrepresentations, Claimant was induced to purchase the stock which then underwent a reverse 5 for 1 split, a name change, and declined to 1/12 of its value.

Respondent Cohn denied the allegations of wrongdoing set forth in the Statement of Claim and specifically asserted the following: The Claimant contacted Musmand and Cohn to place an unsolicited buy order for IDG. Musmand and Cohn made no representations about the stock, Mr. Wenger, or anything else. Claimant waited almost three years before complaining about the alleged misrepresentations. The Claim is barred by laches. The Claim must be dismissed because the statute of limitations has expired.

In its Third Party Claim, Respondent Cohn alleged: Musmand is liable to indemnify it for any award against Cohn. If Cohn is found liable, it is only vicariously liable through the actions of Musmand who is primarily liable. Any actions or misrepresentations by Musmand were outside the scope of Musmand's authority at Cohn.

In his Answer to the Third Party Claim, Respondent Musmand denied the allegations of wrongdoing set forth in the Statement of Claim and specifically asserted the following: The Claimant contacted Musmand to place an unsolicited buy order for IDG. Musmand and Cohn made no representations about the stock, Mr. Wenger, or anything else.

RELIEF REQUESTED

Claimant requested an award in the amount of \$10,000.00.

Respondent Cohn requested a dismissal, attorney's fees, costs, and a judgment against Musmand for any judgment against Cohn.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-03338
Award Page 3 of 4

Respondent Musmand requested a dismissal of the Claim and Third Party Claim, attorney's fees, and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent Cohn appeared through counsel, Charles O'Rourke, Esq., at the telephonic prehearing conference conducted on June 18, 1997. Thereafter, Mr. O'Rourke *withdrew from representation of Cohn* and advised NASD Regulation, Inc. staff that he was not able to reach anyone at the company and that it had closed its doors. There was no representative from Cohn present at the hearing. Upon review of the file and the representations made by the parties, the undersigned arbitrator determined that Respondent Cohn was properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Regulation, Inc. Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondent Cohn received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

2. The parties present at the evidentiary 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, these parties have agreed to receive conformed copies of the award while the original remains 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed. Claimant failed to meet the required burden of proof.
2. Respondents' requests for attorney's fees and costs are denied.
3. The Third Party Claim is hereby dismissed.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-03338
Award Page 4 of 4

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the arbitrator has assessed forum fees in the amount of \$400.00 (two hearing sessions x \$200.00 per session).

1. Claimant is assessed the sum of \$200.00 for which NASD Regulation, Inc. shall retain the \$200.00 previously deposited in full satisfaction thereof.
2. Respondents are assessed the sum of \$200.00, jointly and severally, for which NASD Regulation, Inc. shall retain the \$75.00 previously deposited in partial satisfaction thereof, leaving a balance due in the sum of \$125.00.
3. NASD Regulation, Inc. shall retain the claim filing fee of \$75.00 paid by the Claimant and the claim filing fee of \$500.00 paid by Cohn.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrator's Signature

/s/

Gary L. Tidwell, Esq.
Public/Industry Arbitrator, Presiding Chair

Date of Decision: 3-19-98