

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Edwin W. Parrett

and

96-03605

Name of Respondent

Investors Associates, Inc.
Jeffrey Mansfield

REPRESENTATION OF PARTIES

Edwin W. Parrett ("**Claimant**") was represented by Robert C. Roth, Jr., Esq., Kutak Rock, Denver, Colorado.

Investors Associates, Inc. ("**Respondent IAI**") was represented by Lawrence R. Gelber, Esq., Investors Associates, Inc., Hackensack, New Jersey.

Jeffrey Mansfield ("**Respondent Mansfield**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about August 21, 1996. Submission Agreement of Claimant Edwin W. Parrett was signed on July 25, 1996.

Answer and Motion to Dismiss was filed by Respondent Investors Associates, Inc. on or about November 11, 1996.

Respondent Jeffrey Mansfield did not file a responsive pleading.

HEARING INFORMATION

The hearing was held on Wednesday, April 23, 1997 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that he was an unsophisticated investor with no formal training or educational background in investing. Claimant specifically alleged that Respondent Mansfield made material misrepresentations to induce him to open an account and ultimately transfer his account to Respondent IAI. It was also alleged that the securities purchased through the various brokerage firms that the account was held at were not suitable for the Claimant in light of his investment experience, financial situation and stated investment objectives. Claimant further alleged that Respondent IAI was negligent in the hiring and supervision of Respondent Mansfield. Claimant alleged that the actions of Respondents constituted: violations of the NASD Rules of Fair Practice; unauthorized trading; failure to deliver prospectus; false representations; nondisclosure and concealment; securities fraud; breach of fiduciary duty; negligence; negligent hiring/supervision; and breach of contract.

Respondent IAI denied the allegations set forth in the Statement of Claim. Respondent specifically stated that it acted in full accordance with all statutes, laws, rules, regulations and industry customs and standards applicable to Claimant's account, and at all times provided the Claimant with accurate information about his securities, forwarded regular statements and trade confirmations, and remained available to respond to any and all requests for information on the publicly traded companies purchased by Claimant for his own account and risk.

Respondent IAI asserted numerous affirmative defenses, including but not limited to: assumption of the risk; failure to mitigate; the Claimant ratified each transaction; the claims are barred by the doctrines of estoppel and waiver; Claimant consented to each transaction and paid for each transaction undertaken for his own account; and the Claimant was contributorily negligent.

Respondent Mansfield did not file a responsive pleading.

RELIEF REQUESTED

Claimant requested an award against Respondents Investors Associates, Inc. and Jeffrey Mansfield jointly and severally as follows:

- Compensatory damages in the amount of \$46,000, benefit of the bargain and consequential damages, including without limitation, the loss in value of the Inheritance Funds and lost profits on the Inheritance Funds from July, 1993 through August, 1995, the commissions paid to Respondent Mansfield and/or IAI, including without limitation, commissions in the amount of \$6,068.75 paid to Respondent Mansfield from July, 1994 through January, 1995, and all margin interest charged, together with pre-award and post-award interest at the maximum rate allowed by law.
- Punitive damages in the amount of \$150,000 against Respondents IAI and Mansfield jointly and severally, for their wanton and wilful conduct.

- All costs of arbitration expense, including reasonable consulting fees, expert witness fees, attorneys' fees and other costs and damages deemed reasonable pursuant to the NASD Code of Arbitration Procedure.
- Such other and further relief as this arbitration panel deems just and proper.

Respondent requested that the Statement of Claim be denied in its entirety and that it be awarded costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$12,000, incurred in defending against this claim, and the Panel of Arbitrators should grant to it such other and further relief as justice and equity require.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Jeffrey Mansfield has 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 Respondent Jeffrey Mansfield had 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 Investors Associates, Inc. and Jeffrey Mansfield did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submissions to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code"). Respondent Investors Associates having answered the claim, and having appeared at the hearing is bound by the determination of the arbitration panel on all issues submitted. Respondent Mansfield having appeared at the hearing and testified is bound by the determination of the arbitration panel on all issues submitted.

At the commencement of the hearing, the undersigned arbitrators heard argument on Respondent IAI's Motion to Dismiss. After considering the pleadings and the arguments presented on behalf of the parties, the panel **denied** the motion.

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 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 Investors Associates, Inc. and Jeffrey Mansfield shall be and hereby are jointly and severally liable for and shall pay to the Claimant Edwin W. Parrett the sum of \$17,000 (seventeen thousand dollars).
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of July 1, 1994 to and inclusive of the date this award is paid in full.
3. No punitive damages are awarded herein.
4. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. 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, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit in the amount of \$750 and any additional amounts previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Edwin W. Parrett. Respondents Investors Associates, Inc. and Jeffrey Mansfield shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500 as forum fees. Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** against Respondent Investors Associates, Inc., the non-refundable member surcharge in the amount of \$350. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Carol J. Zamperini
Carol J. Zamperini
Public Arbitrator, Presiding Chair

Dated: April 24, 1997

/s/ Bruce W. Brady
Bruce W. Brady
Public Arbitrator

April 24, 1997

/s/ Gerald W. Wischmeyer, Esq.
Gerald W. Wischmeyer, Esq.
Industry Arbitrator

April 24, 1997