

NASD Regulation, Inc., Award

In the Matter of Arbitration Between

**Arthur W. Cooper, Jr.,
Claimant,**

and

No. 96-03845

**Investors Associates, Inc., and
Coleman Flaherty,
Respondents.**

REPRESENTATION OF PARTIES

Claimant, Arthur W. Cooper, Jr., ("Cooper") represented himself during these proceedings.

Respondents, Investors Associates, Inc., ("Investors Associates") and Coleman Flaherty ("Flaherty") were represented by M. David Sayid, Esq., of Sayid and Associates, located in Hackensack, New Jersey.

CASE INFORMATION

Claimant, Cooper's Statement of Claim was filed on or about September 19, 1996.
Claimant, Cooper's Submission Agreement was signed on August 26, 1996.

Respondents, Investors' and Flaherty's Statement of Answer was jointly filed on or about October 1, 1996. NASD Regulation, Inc., has no record of a Submission Agreement for either Respondent, Investors Associates, Inc., or for Respondent, Coleman Flaherty on file.

HEARING INFORMATION

The hearing was held on July 14, 1998, at 9:00 a.m., for one (1) session in Dallas, Texas.

CASE SUMMARY

Arthur W. Cooper, Jr., ("Claimant,") asserted that his broker at Investors Associates, Coleman Flaherty, mishandled his account and disregarded his intention to be a conservative investor. Claimant said that Flaherty convinced him to transfer his account to him, telling him that he would evaluate his holdings of Wang and HTC, and if necessary sell them without a commission. According to Claimant, Flaherty sold the stocks and charged him a \$150.00 fee. Claimant then related how Flaherty purchased BNGO in his account without authorization, and claimed that it was an error. Lastly, Claimant contended that Flaherty sold him HLOA on January 3, 1996, telling him that it

was a small health service company in Florida, but did not reveal any financial information or describe the risk involved in the purchase of this company. Claimant stated that he purchased it in January at \$2.49 per share, and that as of the filing of the Statement of Claim, the value of the shares had dropped to \$.40 per share. Claimant said that when he learned of the poor condition of the company, he transferred his account to a discount brokerage firm, where he hoped to avoid some of the fees he would have incurred if he had sold the shares through Investors Associates. Claimant said that in June of 1996, the company was suspended from trading for not a posting a quarterly report and the President of the company was then relieved of his position in July. As of the date of the filing of his claims, Claimant stated that the company was then allowed to trade again, and that the shares were selling at \$.40 per share, at the time his claim was filed. Claimant asserted that Investors Associates should not have sold shares of a company in poor financial condition without first making sure that its' customers understood the risks involved, and should have been vigilant in making sure that speculative stocks were not purchased into the account of a conservative investor. The Claimant complained that Investors Associates did not respond verbally or in writing in order to address his situation.

Investors Associates, Inc., and Coleman Flaherty ("Respondents,") denied any wrongdoing as alleged in the Claimants' Statement of Claim and said his claim was without merit. Respondents instead asserted that Claimant was a knowledgeable investor and that his investment goals were in fact determined by Respondents. Respondents denied that Flaherty ever stated he would not charge a commission on the sale of his securities and contended that Respondents immediately canceled the error of the purchase of BNGO at no cost or loss to Claimant. The Respondents questioned the Claimant's rationale in continuing to transact business with Respondents despite the alleged lies, deceit, falsehoods, unauthorized trading and unsuitable investments, and his failure to complain immediately after receiving confirmations of each of his transactions for six months. Respondents said that Claimant's lack of action amounted to a ratification of each transaction. Respondents asserted the following affirmative defenses: assumption of the risk; Claimant knew or should have known of all material facts concerning his securities accounts maintained with Respondent, Investors Associates; and, the Statement of Claim fails to state a cause of action upon which relief might be granted. As alleged, the Respondents violated no written contract, no statute, no law, no rule and no regulation in connection with the allegations set forth in the Statement of Claim.

RELIEF REQUESTED

Claimant, Arthur W. Cooper, Jr., requested an award for \$6,877.00 in compensatory damages, plus punitive damages.

Respondents, Investors Associates, Inc., and Coleman Flaherty, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorney's fees, in an amount not less than \$5,000.00, and any other such relief as equity might allow.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimant, Arthur W. Cooper, Jr., the undersigned Arbitrator has determined that Respondents, Investors Associates, Inc., and Coleman Flaherty, have been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.") The undersigned Arbitrator has also determined that Respondents, Investors Associates, Inc., and Coleman Flaherty, did receive due notice of the hearing as required under Rule 10318 of the Code.

Respondents, Investors Associates, Inc., and Coleman Flaherty, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents, Investors Associates, Inc., and Coleman Flaherty are held to be jointly and severally liable and shall pay to Claimant, Arthur W. Cooper, Jr., the sum of \$7,917.00 in compensatory damages, with interest at ten percent (10%) thereon, beginning to accrue on that sum beginning July 31, 1996; and,
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$75.00 per hearing session. There was one (1) hearing sessions x \$75.00 = \$75.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (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 Rule 10332(c) of the Code, Claimant, Arthur W. Cooper, Jr., has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$75.00 and has also paid the hearing session deposit of \$75.00. Respondents, Investors Associates, Inc., and Coleman Flaherty, are jointly and severally liable for the forum fees in this matter and shall pay the sum of \$75.00 to Claimant, Arthur W. Cooper, as reimbursement for the hearing session deposit already paid.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent, Investors Associates, Inc., shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the \$100.00 past due member surcharge previously invoiced.

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

Concurring Arbitrator's Signature:

/s/ Jonathan A. Pace

August 4, 1998

Jonathan A. Pace, Esq.
Chairperson
Public Arbitrator

Date