

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Bryon Simmons, M.D.

96-04107

Name of Respondent

David Heredia

REPRESENTATION

Claimant Bryon Simmons, M.D. ("Claimant") was represented by Delmer C. Gowing, III, Esq., Delray Beach, FL.

Respondent Heredia ("Respondent") did not appear.

CASE INFORMATION

Statement of Claim filed: September 16, 1996

Claimant's Submission Agreement signed on: August 2, 1996

Respondent did not submit an Answer nor an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: July 23, 1997, two sessions

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged that from time to time during the period August 1994 through December 1994 Respondent, an agent of Stratton Oakmont, purchased the following securities for Claimant's accounts notwithstanding that Claimant rejected Respondent's buy recommendations: Select Media Communications, Octagon, Inc., Dollar Time Group, Inc., Solomon Page Group LTD, and United Leisure Corp. Claimant further alleged that although he was aware of the trades and knew that they were unauthorized, he sent Respondent checks to pay for the securities because he was not paying attention to his account given that his wife was critically ill with brain cancer, and because he was emotionally unable to argue with Respondent and face the realities of Respondent's misrepresentations and unauthorized trading. Claimant further alleged that he did not timely receive prospectuses and/or other documentation because Respondent changed the location of his account to his mother's address. However, Claimant

further asserted that even if he had received documentation, he would not have been able to focus on it due to his wife's illness.

Claimant also alleged that in September 1994, Respondent induced him to purchase one share of Atrium Holding Co., Inc. at a cost of \$100,000 by falsely representing that the investment was risk free.

Claimant contends that Respondent's conduct constituted common law negligence, misrepresentation, unauthorized trading, and fraud. He also contends that the investments were unsuitable, and that Respondent's conduct violated the Pennsylvania Securities Act.

Respondent did not file an Answer to the allegations contained in the Statement of Claim.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested compensatory damages in an amount in excess of \$300,000.00; punitive damages; as well as unspecified costs and attorney's fees. At the hearing, counsel for Claimant requested rescission of the unauthorized trades so that Claimant could recoup his losses (up to \$100,000 per account) from the SIPC.

Respondent did not file a request for relief.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant 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, Claimant agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Since Respondent did not file an answer to the Statement of Claim and/or appear at the hearing, the Panel considered whether Respondent received notice of the claims against him and/or notice of confirmation of the hearing. In that regard, counsel for Claimant represented that he located a Florida address for Respondent through the services of a private investigator; that he sent Respondent a copy of the Statement of Claim by regular mail, which mail was not returned; that he sent Respondent a copy of the Statement of Claim and notice of confirmation of the hearing by certified mail, return receipt requested, and received the receipt from the U.S. Postal Service with the signature of J. Smallwood at Respondent's address dated May 22, 1997; and that he telephoned Respondent's residence and got Respondent's answering machine. The Statement of Claim with the certified mail receipt signed by J. Smallwood was accepted into evidence as Arbitrators' Exhibit 3. The Panel further determined that on July 14, 1997, the NASD Regulation sent Respondent notice of confirmation of the hearing by Federal Express. The notice was sent to the same Florida address to which Claimant's counsel sent his mailings. Federal Express confirmed in writing that the NASD Regulation's letter was delivered and signed for by one D. Clukey. Federal Express' confirmation was accepted as Arbitrators' Exhibit 2. Based on the representations of counsel for Claimant, the representations of the NASD Regulation staff attorney, the signed certified mail receipt and Federal Express' verification of delivery, the Panel finds that Respondent received both the Statement of Claim pursuant to Rule 10314 of the NASD Regulation Code of Arbitration Procedure ("Code") and notice of confirmation of the hearing pursuant to Rule 10315 of the Code and that the hearing would proceed pursuant to Rule 10318 of the Code.

Respondent did not file a properly executed agreement to arbitrate but is required to submit to arbitration pursuant to Rule 10301 of the Code and the by-laws of the NASD and thus Respondent is bound by the rulings and determinations of the Panel.

The Panel considered Claimant's request that the postponement fee arising out of Claimant's request for a postponement be waived and granted the request. NASD Regulation will refund any postponement fee submitted by Claimant.

AWARD

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

1. That Claimant is not entitled to relief.
2. That the claim for punitive damages is denied.
3. That each party shall bear its own costs and expenses with the exception of Forum Fees as specified below.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

2 sessions x \$750.00 = \$1,500.00

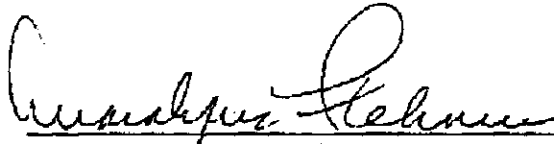
Forum Fees are assessed at \$750.00 to Claimant and \$750.00 to Respondent. Claimant is to receive credit for the \$750.00 Hearing Session Deposit previously submitted to NASD Regulation and thus there is no further assessment due from Claimant. Respondent has a net assessment due of \$750.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

August 15, 1997

CONCURRING ARBITRATORS' SIGNATURES



Maralynne Flehner, Presiding
Public Arbitrator

Joseph F. Lynch, Esq.
Public Arbitrator

Carl T. Necker, Sr.
Industry Arbitrator

Date Decision Served by NASD Regulation: August 20, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

8/11/97

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Aug. 12 1997

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