

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Wally Connard,

Claimant,

and

No. 96-04417

Perry Raphan, and Renaissance Financial Corp.,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Wally Connard, was represented by Michael Salcido, Esquire, located in Scottsdale, Arizona.

Respondent, Renaissance Financial Corp., was represented in the pleadings and at the hearing by Roger J. Schwarz, Esquire, located in New York, New York.

Respondent, Perry Raphan, was represented in the pleadings by Roger J. Schwarz, Esquire, located in New York, New York.

CASE INFORMATION

Wally Connard's Statement of Claim was filed on or about September 30, 1996.

Wally Connard's Submission Agreement was signed on September 30, 1996.

Renaissance Financial Corp. and Perry Raphan's Statement of Answer was filed on or about November 26, 1996.

Respondents' Submission Agreement was signed on December 3, 1996.

HEARING INFORMATION

The hearing was held on June 30, 1997 for two (2) sessions.

The hearing was held in Phoenix, Arizona.

CASE SUMMARY

Claimant, Wally Connard ("Claimant"), brought this action to recover losses allegedly as a result of gross mishandling of his account by Renaissance Financial Corp. and its registered representative, Perry Raphan.

According to Claimant, Renaissance Financial Corp. and Perry Raphan (hereinafter collectively referred to as "Respondents") were informed that the money Claimant was investing was to provide for his retirement and that he, therefore, wanted to invest in securities that were safe and high quality. Claimant contended that Respondents gave him investment advice, and that Respondents knew or should have known that he depended on, relied upon, and typically followed such advice. Claimant asserted that every purchase made in his account was recommended by Respondents, every trade was in a security in which Respondents made a market, and in every trade Respondents acted as a principal for their own account. Claimant summarized the activity in his account as follows:

Date	Name	Buy/Sell	Shares	Price	Cost	Proceeds
5/13/96	Penril	buy	4500	9.125	\$41,072.50	
5/23/96	Penril	buy	500	9.375	4,687.50	
5/28/96	Executone	buy	2000	3.6875	7,385.00	
5/28/96	Iwerks	buy	1500	11.00	16,510.00	
5/28/96	Ramtron	buy	2000	8.00	16,010.00	
6/13/96	Penril	sell	2200	10.00		\$21,990.00
6/13/96	Iwerks	buy	2000	10.25	20,510.00	
6/21/96	Penril	sell	2800	12.75		35,690.00
6/21/96	Intellect	buy	1000	13.50	13,510.00	
6/24/96	Intellect	buy	3000	13.50	40,510.00	
6/26/96	Intellect	buy	2500	13.50	33,760.00	
7/11/96	Iwerks	sell	3000	9.50		28,490.00
7/11/96	Intellect	buy	3000	11.625	34,885.00	
7/19/96	Executone	sell	2000	2.1875		4,365.00
7/19/96	Iwerks	sell	500	8.50		4,035.00

7/19/96	Ramtron	sell	2000	5.1875		11,615.00
7/30/96	Intellect	sell	3000	8.00		23,990.00
9/9/96	Intellect	sell	6500	7.50		<u>48,750.00</u>
					<u>\$228,840.00</u>	<u>\$178,925.00</u>

Claimant alleged that Respondents did not make suitable investment recommendations to him, and that the account was excessively traded, which resulted in a loss of \$49,915.00. Claimant stated that he closed this account in September 1996. Claimant made the following legal claims: (1) unsuitable investment recommendations; (2) securities fraud, in violation of ARS § 44-1991; (3) fraud; (4) churning; (5) dishonest and unethical conduct as defined in the Arizona Securities Act, AAC R14-4-130; (6) breach of fiduciary duty; (7) negligent supervision and/or failure to supervise; (8) negligent misrepresentations; and (9) negligence.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. As affirmative defenses, Respondents averred that: The Statement of Claim failed to sufficiently allege claims upon which relief can be granted; that the NASD is without jurisdiction to award some or all of the statutory relief requested; that upon information and belief, Claimant was a skilled and experienced investor; that he met the minimum suitability requirements of each investment that forms the subject of the claim; that the underlying transactions were made after all facts, information, and risks were fully disclosed to him; that Claimant was contributorily negligent, assumed the risks of his investments, and otherwise failed to exercise reasonable diligence and to mitigate the damages alleged; and that Claimant's claims are barred under the doctrines of ratification and/or waiver.

RELIEF REQUESTED

Claimant, Wally Connard, requested an award for: compensatory damages of at least \$49,915.00; pre-judgment and post-judgment interest until the award is paid in full; "opportunity" or "benefit of the bargain" losses based on how the account would have performed had it been properly managed; disgorgement of all commissions, mark-ups, profits and margin interest charged to the account; costs and attorneys' fees incurred herein, including all NASD filing and expert witness fees, pursuant to ARS §§ 12-341.01 and 44-2001; and punitive damages.

Respondents, Renaissance Financial Corp. and Perry Raphan, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and counsel fees.

OTHER ISSUES CONSIDERED AND DECIDED

On November 26, 1996, Renaissance Financial Securities Corp. moved to compel production by

Claimant of documents and information, and in the alternative, on February 4, 1997 and April 1, 1997, to strike Claimant's Statement of Claim. On April 16, 1997, Claimant Connard moved to bar Respondents from the presentation of facts and defenses. On April 30, 1997, the panel of arbitrators granted Respondent Renaissance's motion to compel production of documents and information and denied Renaissance's alternative motion to strike Claimant's Statement of Claim. On April 30, 1997, the arbitrators denied Claimant's motion to bar Respondents from presenting facts and defenses.

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 Renaissance Financial Securities Corp. and Perry Raphan are jointly and severally liable for, and shall pay to the Claimant, Wally Connard, the sum of \$37,690.00 plus interest at the rate of 10% per annum from the date of this Award, until paid.
2. Respondents Renaissance Financial Securities Corp. and Perry Raphan are jointly and severally liable for, and shall pay to the Claimant, Wally Connard, the sum of \$520 as reimbursement for the costs of filing this arbitration.
3. Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.
4. 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, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$400 = \$800 in forum fees. Pursuant to § 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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration Number 96-04417
Award Page 5 of 5

retain the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Wally Connard.

Pursuant to § 10333 of the Code, Renaissance Financial Corp. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$200.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Renaissance Financial Corp.

Additional forum fees in the amount of \$400 are assessed jointly and severally against Respondents Renaissance Financial Securities Corp. and Perry Raphan.

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

Concurring Arbitrators' Signatures

Charles A. Finch
Charles A. Finch
Chairperson
Public Arbitrator

July 16, 1997
Dated:

George A. Schade, Jr.
George A. Schade, Jr.
Panelist
Public Arbitrator

July 28, 1997
Dated:

Maurice O. O'Neill
Maurice O. O'Neill
Panelist
Industry Arbitrator

July 16, 1997
Dated: