

970715

NASD REGULATION, INC. AWARD

NASD REGULATION, INC., Office of Dispute Resolution

_____)	
Matt Kasap,)	
)	
Claimant)	
)	
v.)	Case No. 96-04478
)	
Folger Nolan Fleming)	
Douglas Inc. and)	
Joseph Anderson,)	
)	
Respondents)	
_____)	

REPRESENTATION

Claimant Matt Kasap ("Claimant") was represented by John P. Connolly, Esq., Law Offices of John P. Connolly, Alexandria, VA.

Respondents Folger Nolan Fleming Douglas Inc. ("Folger Nolan") and Joseph Anderson ("Anderson") were represented by Mitchell F. Dolin, Esq. and Thomas O. Barnett, Esq. Of the law firm of Covington & Burling, Washington, D.C.

CASE INFORMATION

Statement of Claim filed: October 2, 1996

Claimant's Submission Agreement signed on: October 1, 1996

Statement of Answer filed by Folger Nolan on: November 25, 1996

Folger Nolan's Uniform Submission Agreement executed by John P. Rodler, Senior Vice President of Folger Nolan Fleming Douglas, Inc. on: November 19, 1996

Statement of Answer filed by Anderson on: November 25, 1996

Anderson's Uniform Submission Agreement signed on: November 19, 1996

HEARING INFORMATION

Pre Hearing Conference Date/Session: May 5, 1997 - one session

Hearing Dates/Sessions: June 23, 1997 - two sessions
June 24, 1997 - three sessions

Hearing Location: NASD Regulation, Inc., District 9
Washington, DC

CASE SUMMARY

Claimant alleged that Respondents committed fraud upon the Claimant through false statements and material omissions of fact in connection with a margin account in violation of the following: (i) Rule 10b-5 promulgated under Section 10(b) of the Securities Exchange Act of 1934; (ii) Section 13.1-502 of the Code of Virginia; (iii) NASD Rules of Fair Practice; (iv) state laws pertaining to breach of contract; and (v) common law fraud and deceit. Specifically, Claimant alleged that Respondents falsely represented the amount of his margin debit and account equity and failed to make adequate disclosures both when Claimant opened a margin account and during the period the account was both when Claimant traded in a declining market. Claimant alleged that he relied to his detriment on Respondent Anderson's false statements and omissions in connection with the purchase and sale of securities in his margin account, that Folger Nolan failed to supervise Anderson, and that Claimant suffered damages as a direct result of these material acts and omissions.

Respondents denied making any false statements or material omissions of fact in connection with Claimant's margin account. Respondents maintained that Claimant represented himself to be -- and was -- a wealthy and sophisticated businessman knowledgeable in financial transactions in general and with experience in securities trading, including trading on a margin account. Respondents further maintained that Claimant understood all material terms of the margin account, including that he was borrowing money, the amount that he was borrowing, the interest that would be charged, that securities in the account served as collateral for his loan, and that Respondents could sell securities in the account if they deemed the collateral to be insufficient. Respondents maintained that Claimant used the margin account to purchase securities, including a large block of one issue. Respondents maintained that Claimant was informed of the amount of his holdings, the amount of his margin debit, and the decline in the market value of his securities. Despite having ample financial resources, Respondents maintained that Claimant chose not to meet the margin call on his account. Respondents maintained that Claimant's losses resulted from the declining value of the securities that he chose to purchase, not from any improper actions by Respondents.

RELIEF REQUESTED

Claimant requested compensatory damages against Respondents in the amount of \$468,000.00; that pre-award interest be assessed; punitive damages of \$200,000.00; and costs and fees, including an award of attorney's fees, pursuant to the Virginia Securities Act.

Respondents requested that the Statement of Claim be dismissed and that costs and Respondents' fees and expenses, including attorneys' fees, be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD Regulation.

AWARD

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

1. That Claimant's claim is denied in its entirety.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That the parties shall bear their respective costs including attorneys' fees except as forum fees are specifically provided for below.
4. Any and all damages not specifically addressed herein are denied in their entirety.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(1 pre hearing conference x \$300) + (5 hearing sessions x \$1,000) = \$5,300

Forum Fees Assessed Against: 1/3 Claimant and 2/3 Respondent Folger Nolan.

Claimant is assessed forum fees in the amount of \$1,767; however, Claimant is entitled to offset this amount with his hearing session deposit of \$1,000 so that the amount due from Claimant as forum fees is \$767. Folger Nolan is assessed forum fees in the amount of \$3,533.

Forum Fees are payable to the NASD Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

8/5/97

Bruce Sanders

Bruce Sanders, Esq. - Chairman
Public Arbitrator

Richard E. Lauziere - Panelist
Public Arbitrator

Pierre J. Dolan - Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

July 30, 1997

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Forum Fees Assessed Against: 1/3 Claimant and 2/3 Respondent Folger Nolari.

Forum Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures

7-17-97

Pierre J. Dolan - Panelist
Industry Arbitrator

July 30, 1997

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Forum Fees are payable to the NASD Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

Bruce Sanders, Esq. - Chairman
Public Arbitrator

Richard E. Lauziere - Panelist
Public Arbitrator

JULY 28, 1997

Pierre J. Dolan
Pierre J. Dolan - Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

July 30, 1997