

NASD REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Robert M. Schwartz

96-04767

Name of Respondents

American Eagle Investments, Inc.
Allen R. Rosenberg
Richard Nelson

REPRESENTATION

For claimant Robert M. Schwartz ("claimant") appeared Lloyd S. Clareman, Esq., with law offices located in New York, New York.

For respondents American Eagle Investments, Inc. ("American Eagle") and Allen R. Rosenberg ("Rosenberg") appeared Daniel E. Bacine, Esq. of the law offices of Barrack, Rodos & Bacine, located in Philadelphia, Pennsylvania.

Respondent Richard Nelson ("Nelson") appeared pro se.

CASE INFORMATION

Statement of Claim was filed on October 25, 1996. Claimant's Submission Agreement was signed on November 12, 1996.

Joint Statement of Answer was filed by respondents American Eagle, Rosenberg and Nelson on January 24, 1997. American Eagle's Submission Agreement was signed on January 24, 1997. Rosenberg's Submission Agreement was signed on January 24, 1997. Nelson did not file a Submission Agreement in this matter.

HEARING INFORMATION

Hearing Date/Sessions: May 23, 1997 - One Session

The hearing was conducted at the offices of NASD Regulation, Inc. located in Boston,

Massachusetts.

CASE SUMMARY

Claimant alleged that he received a telephone call from Nelson, who identified himself as a broker with American Eagle. Claimant further alleged that, during this conversation, he told Nelson that he was interested in safe, fixed-income investments and that he did not want to put any more money at risk in the stock market. Claimant also asserted that he told Nelson that he was in a period of transition and he expected his income to decline significantly, and, therefore, he wanted only safe investments that a produced good, market rate of income.

Claimant alleged that Nelson recommended that he invest in the Bennett Funding Group and that Nelson said that his firm's president, Rosenberg, had a close relationship with the Bennett Funding Group and they could vouch for its integrity and principles. Claimant further alleged that he invested in Bennett in August, 1995 and that, shortly after he made his initial investment, he was solicited by Nelson to invest in the Beckett Reserve Fund, a new Bennett-related entity. Claimant maintained that, on November 13, 1995, he agreed to invest in Beckett, and that Nelson continued to call and encourage him to invest even more in Beckett which he agreed to do. Claimant maintained that, in the first week of April, 1996, he received a telephone call from Nelson with the news that Bennett Funding was guilty of fraudulently selling \$570 million worth of securities and was now in bankruptcy.

Respondents maintained that it was claimant who made the investment decisions of which he now complains. Respondents further maintained that they did not breach any duty owed to claimant and denied that they failed to provide claimant with any available, material information regarding the investments before he decided to make such investments.

RELIEF REQUESTED

Claimant requested actual damages in the sum of \$247,224.55 plus pre-award interest at the legal rate from April 1, 1996 to the date of award; costs of this action, including all hearing costs and filing fees; and attorney's fees. At the hearing in this matter claimant amended his Statement of Claim to request punitive damages in an amount deemed appropriate by the panel.

Respondents requested that claimant's claims be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On May 20, 1997, respondent Rosenberg filed for bankruptcy under Chapter 7 of the Bankruptcy Code. Accordingly, all claims against Rosenberg were stayed.

At the hearing on May 23, 1997, claimant made a motion to amend the Statement of Claim to add a request for punitive damages in an amount deemed appropriate to the panel. The panel granted the motion.

The panel made the following determinations concerning respondent American Eagle, who did not appear at the hearing in this matter and respondent Nelson, who did not file a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that American Eagle was a member of the NASD and that Nelson was a person associated with a member at the time this controversy arose. Accordingly, the panel found personal jurisdiction over American Eagle and Nelson pursuant to Rule 10301 of the Code.
3. The panel found that Nelson was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Richard Nelson pursuant to Rule 10314(a) of the Code.
4. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided American Eagle and Nelson with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without American Eagle and Nelson, whose absences were unexcused.

Claimant, the only party to appear at the hearing in this matter, 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.

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 American Eagle and Nelson be and hereby are jointly and severally liable and shall pay claimant the sum of \$247,224.55, plus interest at the rate of 12% from April 1, 1996 until the date of payment.
2. The panel hereby finds that respondent American Eagle engaged in clear and willful fraud and, therefore, American Eagle is hereby liable and shall pay claimant the sum of \$741,673.65, representing punitive damages. Punitive damages are awarded pursuant to the Massachusetts Consumer Protection Law (M.G.L. Chapter 93a) and Massachusetts blue sky laws (M.G.L. Chapter 110a *et seq.*).
3. Each party shall bear their respective costs, including attorneys' fees, except that

respondents American Eagle and Nelson be and hereby are liable and shall pay claimant the sum of \$750.00 to reimburse claimant for a portion of the fees he previously paid to NASD Regulation, Inc.

4. All other claims are denied.

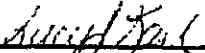
FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 filing fee paid by claimant and \$350.00 member surcharge paid by American Eagle and have assessed the following Forum Fees:

1 hearing session x \$750.00 = \$750.00

Respondents American Eagle and Nelson be and hereby are liable for the sum of \$750.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, respondents American Eagle and Nelson shall pay that sum to claimant as provided in the "Award" section above.

Arbitrators' Signatures



Lucy J. Karl, Esq.
Chairperson-Public Arbitrator

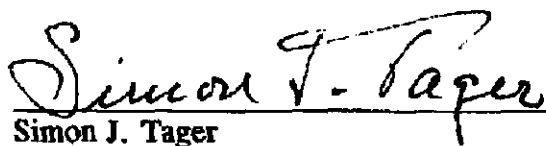
Simon J. Tager
Public Arbitrator

William Driscoll
Industry Arbitrator

Date of Decision: August 15, 1997

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