

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Cullom & Sandow Securities, Inc.,

Claimant,

and

No. 96-04904

Richard Wayne Wells, Sr.,

Respondent.

REPRESENTATION OF PARTIES

Claimant Cullom & Sandow Securities, Inc. ("CSS") was represented by Richard L. Sandow of Cullom & Sandow Securities, Inc. located in Roanoke, Texas.

Respondent Richard Wayne Wells, Sr. ("Wells") represented himself.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about November 13, 1996.

Claimant's Submission Agreement was signed on November 1, 1996.

Claimant's First Amended Statement of Claim was filed on or about September 9, 1997.

Respondent's Statement of Answer was filed on or about January 17, 1997.

Respondent's Submission Agreement was signed on January 15, 1997.

HEARING INFORMATION

A large and complex case administrative telephonic pre-hearing was held with NASD Regulation, Inc. Office of Dispute Resolution staff on June 10, 1997.

The hearings was held on September 24, 1997 for one (1) session and September 25, 1997 for two (2) sessions for a total of three (3) hearing sessions..

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimant Cullom & Sandow Securities, Inc., ("CSS"), brought this action against Respondent Richard Wayne Wells, Sr., ("Wells") because CSS alleged it had suffered financial damages from Wells' previous NASD arbitration and wrong doings. Specifically, CSS alleged that: Wells violated the terms of his contract with CSS, violated the rules of the NASD, and violated the policies of CSS, thereby causing CSS to suffer losses exceeding \$300,000.00.

CSS explained that Wells became an Associated Person of CSS on December 18, 1989. He was suspended from acting as such on May 5, 1994, and his association with CSS was terminated on September 29, 1994. CSS asserted that it originally hired Wells as a Registered Representative to work in its Dallas home office. In June, 1991, Wells became an independent contractor of CSS and self-employed broker to work out of his home in Rockwell, Texas. After June, 1991, Wells was never an employee, officer or principal of CSS.

CSS asserted that on August 26, 1992, Wells signed a Registered Sales Representative Agreement with CSS, and that this agreement had as its basis the standard Agreement then in use by CSS, but that it was somewhat modified by Wells and CSS. CSS claimed that the agreement provided that: Wells shall comply with all state and federal securities laws and rules, regulations and policies of the NASD and SEC; Wells shall comply with any rules, regulations, procedures or restrictions established by CSS; Wells shall hold CSS harmless from all claims, demands and suits arising out of Wells' performance of the Agreement; and that Wells shall reimburse CSS in the same percentage basis as Wells' commission payout for CSS expenses, including attorneys' fees and costs, in defending any claims, whether founded or unfounded, brought against CSS arising out of the actions of Wells.

Numerous cases and settlements gave rise to this arbitration, and are discussed below.

Ms. Sadie Brumley, ("Brumley"), opened several accounts with CSS in December, 1991, with Wells as the broker of record, and over the course of several years, significant losses accumulated to these accounts. Brumley alleged that these losses were the result of Brumley making unsuitable recommendations. Brumley and CSS arrived at a settlement for \$10,000.00. In addition, CSS agreed to manage the Brumley account at no charge until the account has grown to a principal value of 4170,000.00. CSS estimated that this management arrangement has already cost it more than \$5,000.00.

Wanda Jo Gardner, ("Gardner"), opened an account with CSS with about \$25,000.00. At this time she was an unsophisticated investor, and Wells reported that Gardner was an old friend of his family, whom he had known since childhood, and that Gardner wanted to speculate in options with only \$5,000.00. Based on this understanding, Sandow approved her account for limited option trading. However, over several months, Gardner engaged in about twelve option positions and lost about \$3,800, at which point all option trading in the Gardner account ceased. Her remaining investments gradually deteriorated over the next two years, eventually losing the majority of their value.

Despite his contract, Wells refused to reimburse CSS for its own attorneys' fees and costs associated with the arbitration claim Gardner filed with the NASD.

Celia and Hubert Loudermilk are mother and son who opened a joint account in October, 1991, with the objective of conservative investing to generate income. During July, 1993, the account began to trade stock on a short-term basis, together with a small number of option trades. Over a period of four months, Loudermilk suffered losses of about \$42,000.00. A complaint was filed that alleged unsuitable recommendations and unauthorized trading. Wells claimed that the account was turned over to the son of Hubert by mother Celia for Hubert's exclusive management and that he traded aggressively in an effort to avoid having to help his mother financially. Wells claimed that it was merely a clerical oversight on his part that he failed to file papers showing that the investment objectives of the Loudermilks' had changed. Loudermilk filed an arbitration case against CSS and Wells, and the panel found in favor of the Loudermilks' for \$53,000.00, plus \$8,000.00 in attorneys' fees. Once again, CSS alleged that despite his contract, Wells refused to reimburse CSS for its losses.

Garland and Edythe Conner, a husband and wife in their late 70's, opened an account in November 1991, depositing eventually \$350,000.00 with an investment objective of Conservative for Income.

Throughout 1992, the account continued to purchase mutual funds, using margin to increase Conner's holdings. During October 1993, the account began a series of short-term trades that resulted in losses of \$4,457.00. Also, during October, three option transactions were executed which resulted in a loss of \$45,860.00. Mr. Conner voiced a complaint in June of 1994, after Wells had been suspended by CSS, which alleged that the option trades were done without authorization. He further alleged that his wife's signature on the customer margin agreement was forged.

The arbitration panel found in favor of the Conners' and awarded them \$149,000.00 plus \$1250.00 reimbursement of arbitration forum fees, assessed both jointly and severally against CSS and Wells. In addition, the arbitration panel ordered Wells individually to pay \$50,000.00 in punitive damages. Subsequently, CSS negotiated a private settlement with Conner in the amount of \$99,000.00. As before, CSS alleged that despite his contract, Wells refused to reimburse CSS for its losses in the claim. CSS also contended that Wells also refused to reimburse CSS for its own attorneys' fees and costs.

Finally, Richard Goris opened an account during June 1992, with a moderate to aggressive risk profile. He purchased several closed-end bond funds. Goris filed an arbitration case against CSS and Wells, which alleged that Wells misrepresented the risks associated with his investments, as a result of which he suffered losses of \$12,000.00. CSS and Goris reached a private settlement agreement against CSS in which CSS paid Goris the sum of \$3,000.00; and Goris dismissed all claims against CSS. Just as in the other cases, CSS alleged that despite his contract, Wells refused to reimburse CSS for its losses in this claim, as well as refusing reimbursement for its attorneys' fees and costs.

CSS contended that it never had a serious customer complaint before Wells came on the scene,

On September 9, 1997, Claimant CSS amended the original Statement of Claim in writing by asking for an additional \$59,000.00 in damages, for a total of \$365,311.00.

On Monday, September 22, 1997 Wells made a motion for postponement. On Tuesday, September 23, 1997 the panel agreed to hear the motion at the start of the scheduled hearing on Wednesday, September 24, 1997. The motion was then denied and the hearing proceeded on Thursday September 25, 1997.

Initially at the hearing, Claimant CSS had an attorney-friend with it to assist it in the arbitration. When it became obvious that Respondent Wells would not have an attorney, CSS volunteered to withdrawal its attorney, and CSS's attorney withdrew.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Richard Wayne Wells, Sr. is liable for and shall pay Cullom & Sandow Securities, Inc. compensatory damages in the sum of \$67,755.00.
2. 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 \$1,000.00 per hearing session and \$300 for each pre-hearing conference, if any. There were 3 hearing sessions x \$1,000.00 = \$3,000.00 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$500.00 and shall retain as forum fees the hearing session deposit of \$1,000.00 previously deposited with the NASD Regulation, Inc. Office of

and that Wells' association with CSS has subjected CSS to massive financial losses, and the loss of much of its good name and reputation.

Respondent Richard Wayne Wells, Sr. ("Wells") denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on his part. Rather, Wells asserted that: the Registered Sales Representative Agreement also states that because there was no employee/employer relationship, joint venture, or partnership relationship between CSS and Wells, "...the details of Representative's work are not subject to the control or supervision of the Company." Therefore, Wells argued that by being the principal of the registered firm and engaging representatives for its securities business, CSS cannot contract away its obligations of supervision under the NASD rules and regulations. Specifically, Wells contended that according to the NASD Rules of Fair Practice, "final responsibility for proper supervision shall rest with the member." CSS attempted to convey its supervisory obligations to the "independent contractor" under the provisions of the Agreement regardless of its clear responsibility.

Wells argued that has CSS properly supervised Wells activity by following its own procedures and those procedures required by the NASD, that Wells' activities would not have resulted in these claims.

Further, Wells contended that CSS chose to settle certain claims that could have otherwise been successfully defended.

RELIEF REQUESTED

Claimant CSS requested an award for: \$306, 311.20 in actual damages; standard time charges for the extraordinary expenditure of the time of its staff, managers, officers, and directors; attorneys' fees, actual expenses, and its standard time charged in the prosecution of this case; punitive damages in the amount of three times actual damages, or the sum of \$918, 933.60; and that the costs of this Arbitration Proceeding be assessed against Wells.

Respondent Wells requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and attorneys' fees, as well as any and such further relief that is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimant CSS the undersigned arbitrators have determined that Respondent Wells has been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Wells had received due notice of the hearing as required under § 10318 of the Code.

Dispute Resolution by Claimant, CSS.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant CSS.

Claimant Cullom & Sandow Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office for Dispute Resolution the remaining forum fees in the amount of \$2000.00 (= \$3,000.00 total forum fees - \$1000.00 hearing session deposit previously deposited by Claimant.)

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

Concurring Arbitrators' Signatures

/s/ Stephen C. Thayer

November 12, 1997

Stephen C. Thayer, Esq.
Chairperson
Industry Arbitrator

Dated:

/s/ Stephen Denning

November 11, 1997

Stephen Denning
Panelist
Industry Arbitrator

Dated:

/s/ Timothy L. Andrews

November 11, 1997

Timothy L. Andrews
Panelist
Industry Arbitrator

Dated:

For NASD use only:

Date Award was served on the parties: November 14, 1997