

41/1105

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Benjamin E. & Iola J. Peterson

and

96-05363

Name of Respondent

*First Equity Corp. of Florida
The Heritage Group
Adam Karasik
Richard Davis

REPRESENTATION OF PARTIES

Benjamin E. & Iola J. Peterson ("Claimants") were represented by Mark J. Briol, Esq., Briol & Associates, Minneapolis, Minnesota.

First Equity Corp. of Florida ("Respondent First Equity") and Richard Davis ("Respondent Davis") were represented by Frederick S. Schriels, Esq., Holland & Knight, Tampa, Florida.

The Heritage Group ("Respondent Heritage") was represented by Lawrence W. Fasano, Jr., Esq., San Francisco, California.

Adam Karasik ("Respondent Karasik") was represented by Charles D. Franken, P.A., Plantation, Florida.

CASE INFORMATION

The Statement of Claim was filed on or about December 3, 1996. Submission Agreement of Claimants Benjamin E. & Iola J. Peterson was signed on November 27, 1996.

Statement of Answer was filed by Respondents First Equity Corp. of Florida and Richard Davis on or about February 6, 1997.

Statement of Answer was filed by Respondent The Heritage Group on or about August 15, 1997.

Statement of Answer was filed by Respondent Adam Karasik on or about January 16, 1997. Submission Agreement of Respondent Adam Karasik was signed on January 7, 1997.

HEARING INFORMATION

Pre-hearing conferences were held on September 4, 1997 for one (1) session and September 11, 1997 for one (1) session. The hearing was held on Monday, October 20, 1997 for two (2) sessions, Tuesday, October 21, 1997 for two (2) sessions, Wednesday, October 22, 1997 for three (3) sessions, Thursday, October 23, 1997 for one (1) session and Friday, October 24, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of two (2) prehearing and ten (10) hearing sessions.

CASE SUMMARY

Claimants allege that, in December 1995, Respondents, Heritage and Karasik, wrongfully induced Claimants to wire transfer \$352,000 in funds to Respondent First Equity for purchase of a stock the Claimants believed was Aoxner Petroleum. Claimants believed the stock was being purchased at Heritage, not First Equity.

Claimants contend they subsequently discovered they had, in fact, purchased 58,000 shares of a company called Auxer Industries, Inc. (not Aoxner Petroleum) for \$6.00 a share. The stock was not purchased at Heritage as they believed, but at First Equity where, they allege, an account had been opened in their names, without their knowledge or permission. Respondent Richard Davis appeared as the First Equity account representative on the alleged fictitious account.

Claimants contend that, within days, the stock, for which they had paid \$6 per share, had plummeted to under \$1.00 per share. Thereafter, they allege 57,000 shares of Auxer Industries were delivered to them in Minnesota, which they then sold for total proceeds of \$80,482.74. Claimants seek to recover the difference between the \$352,000 and the proceeds received of \$80,482.74 for total compensatory damages exclusive of interest, costs and attorneys fees, of \$271,159.54.

Claimants made the following legal claims: (1) Respondents, jointly and severally, violated the Minnesota State Securities Laws, Minn. Stat. Secs. 80A.01, 80A.03 and 80A.08; (2) Respondents, jointly and severally, violated federal securities laws including section 10(b) of the Securities and Exchange Act of 1934 (15 U.S.C. Sec. 78j(b)) and 10b-5, promulgated thereunder, (17 C.F.R. 240.10b-5); Respondents, jointly and severally, are liable under the common law theory of negligence; (4) Respondents, jointly and severally, committed common law breach of fiduciary duty; (5) Respondents, First Equity and Heritage, are liable under theories of respondeat superior and failure to supervise; (6) Respondents, jointly and severally, committed common law fraud; (7) Respondents, jointly and severally, violated Minnesota's Prevention of Consumer Fraud Act, Minn.

Stat. Secs. 325F.69 et. seq., and Minn. Stat. Sec. 8.31(3)(a); and (8) Respondents, and each of them, are liable for punitive damages.

Respondents First Equity and Davis denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimants' account was opened over the telephone by an individual who claimed to be Mr. Peterson. It was stated that the individual possessed personal information about the Petersons and the employee who took the call had no reason to be suspicious. Respondents stated that after obtaining the information over the telephone, the broker forwarded to the Petersons the new account forms for signature. It was stated that while awaiting receipt of the signed account forms, the person who claimed to be Mr. Peterson placed an order to purchase 58,000 shares of Auxer Industries stock. Respondents First Equity and Davis stated that he confirm was immediately sent to the address provided by the individual who claimed to be Mr. Peterson. Subsequent account statements were also sent to that address. It was further stated that following the deposits of funds to pay for the Auxer transaction, no other activity occurred in the Claimants' account. Respondents First Equity and Davis also stated that they cooperated completely with Claimants' counsel upon learning of the allegation that the Claimants had no knowledge of the activity or existence of the First Equity account.

Respondent Heritage Group denied the allegations set forth in the Statement of Claim. Specifically, Respondent Heritage Group stated that during the time period in question, the Claimants did not receive a single document from The Heritage Group and that all transactions were done through First Equity of Florida. Respondent Heritage also stated that he Claimants were aware that they were not dealing with it but were dealing with First Equity.

Respondent Karasik denied all of the allegations of wrongdoing set forth in the Statement of Claim. Specifically, Respondent Karasik stated

RELIEF REQUESTED

Claimants request an award of \$323,159.54 (compensatory damages with accrued interest), unspecified punitive damages, costs and reasonable attorneys' fees under Minn. Stat. Sec. 80A.23.

Respondents First Equity Corp. of Florida and Richard Davis requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Respondent The Heritage Group requested that the Claimant recover nothing from it. In the alternative, Respondent The Heritage Group requested that it be indemnified by the other Respondents for any award entered herein.

Respondent Karasik requested that the arbitration panel dismiss the Arbitration Claim with prejudice with a specific factual finding that the Arbitration Claim should never have been brought against

respondents, to award costs to the respondents and to reserve the right to file for attorneys fees with a Court of law and other relief as the Arbitrators deem proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondents First Equity Corp. of Florida, The Heritage Group and Richard Davis did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 First Equity of Florida and Richard Davis shall be and hereby are jointly and severally liable for and shall pay to the Claimants Benjamin E. & Iola J. Peterson the sum of \$122,823.74 (one hundred twenty two thousand eight hundred twenty three dollars and seventy four cents) as compensatory damages.
2. Respondents The Heritage Group and Adam Karasik shall be and hereby are jointly and severally liable for and shall pay to the Claimants Benjamin E. & Iola J. Peterson the sum of \$160,000 (one hundred sixty thousand dollars) as compensatory damages.
3. Respondent Adam Karasik shall be and hereby is liable for and shall pay to the Claimants Benjamin E. & Iola J. Peterson the sum of \$50,000 (fifty thousand dollars) as punitive damages. In awarding punitive damages, the undersigned arbitrators have reviewed the written submissions of the parties and have determined that they have the authority to award punitive damages.
4. Interest at the rate of 8% per annum is awarded on the sums set forth above from and inclusive of the date of this award to and inclusive of the date this award is paid in full.

5. Each party shall bear its own costs, expenses and fees, including attorneys fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$300 and ten (10) sessions x \$750 = \$8,100 in forum fees. Pursuant to Rule 10332(b) 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 Rule 10332 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Benjamin E. & Iola J. Peterson. Respondent First Equity Corp. of Florida shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$4,050 as forum fees. Respondent The Heritage Group shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$4,050 as forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 paid by Respondent First Equity Corp. of Florida. Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall assess the non-refundable member surcharge in the amount of \$350 against Respondent The Heritage Group. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Earl B. Gustafson
Earl B. Gustafson
Public Arbitrator, Presiding Chair

November 6, 1997

/s/ Allan E. Fonfara
Allan E. Fonfara
Public Arbitrator

November 14, 1997

/s/ Lee T. Beske
Lee T. Beske
Industry Arbitrator

November 5, 1997