

N.A.S.D. REGULATION, INC. AWARD

NASD Regulation, Inc., Office of Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Charles L. and Elizabeth C. Jester

96-05405

Names of Respondents

**Dallas Research & Trading, Inc.
James Bailey**

REPRESENTATION

For Claimants: George J. Felos, Esq. of Felos & Felos, P.A., Dunedin, Florida.

For Respondents: Michael A. Piazza, Esq. of Akin, Gump, Strauss, Hauer & Feld, L.L.P., Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on: December 9, 1996.

Claimants' Submission Agreement signed on: October 14, 1996.

Joint Statement of Answer filed by Respondents: February 12, 1997.

Respondents' Submission Agreement signed on: February 5, 1997.

HEARING INFORMATION

On September 23, 1997 and December 11, 1997 the arbitration panel conducted telephonic pre-hearing conferences which lasted two (2) sessions.

CASE SUMMARY

Claimants alleged the following: On or about May or June of 1995, Claimant Charles Jester ("Jester") was contacted by Respondent James Bailey ("Bailey"), who represented to Jester that he had become a Vice President of Respondent, Dallas Research & Trading, Inc., ("Dallas"). Bailey, through numerous phone calls and representations, coerced Claimants to invest their savings into various stock transactions. Of the \$400,000.00 in cash Claimants deposited with Dallas, upon liquidating their account, they received \$183,477.57, resulting in a loss to the Claimants of \$216,522.43, including commissions and margin interest. As a result of Respondents' actions, Respondents have violated the provisions of Chapter 517,

Florida Statutes, the Florida Securities and Investor Protection Act; section 10 of the Securities Exchange Act of 1934; common law fraud; breach of fiduciary duty to the Claimants; negligence; and breach of their contractual relationship with Claimants.

Respondents alleged the following: Respondents at all times handled Claimants' (the "Jesters") account in a manner consistent with the terms of their customer agreement and in accordance with the Jesters' instructions. None of the trades were unauthorized, and based upon the Jesters' representations to Respondents and their financial status, the trades they authorized were suitable for this investment portfolio. Further, no misrepresentations were made to the Jesters, nor did Respondents breach any legal or contractual duties owed to the Jesters. Thus, the Jesters are not entitled to recover anything in this proceeding. Alternatively, in the event the Jesters show themselves to be entitled to any recovery, it is the Respondents' position that the Jesters have not sustained damages anywhere near the amount of \$216,522.43.

RELIEF REQUESTED

Claimants requested the following: compensatory damages of \$216,522.43 from Respondents, along with interest at the statutory rate from the purchase date to the liquidation date of the subject investments; punitive damages; and payment of their costs and reasonable attorney's fees incurred in this action.

Respondents requested that the Claimants' claims be rejected in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

1. 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, Inc.
2. On January 7, 1998, the panel issued an Order ratifying and approving the settlement agreement entered into by the parties on December 9, 1997.
3. Claimants subsequently alleged that in February, 1998, Dallas breached the executed settlement agreement. Claimants then filed a Motion for Entry of Final Award (the "Motion"), pursuant to terms of the settlement agreement. Respondents did not file a response to this Motion. Thereafter, the panel granted Claimants' Motion.

AWARD

After considering the settlement agreement, pleadings and the other issues set forth above, the undersigned arbitrators have decided the following in full and final resolution of the issues submitted in this Arbitration Proceeding:

1. Respondent Dallas is found liable, and shall pay to the Claimants the sum of \$199,583.34.
2. Respondent Bailey is found liable, and shall pay to the Claimants the sum of \$20,000.00.
3. Respondents are liable, jointly and severally, and shall reimburse the Claimants \$750.00 representing the hearing session deposit previously paid by the Claimants to NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure (the "Code"), the panel has assessed forum fees in the amount of \$1,500.00 (2 sessions x \$750.00 per session).

1. Respondent Dallas is hereby assessed the sum of \$1,380.00 for which NASD Regulation, Inc. shall retain the \$750.00 hearing session deposit previously paid by the Claimants in partial satisfaction thereof, leaving a balance due in the amount of \$630.00.

2. Respondent Bailey is hereby assessed the sum of \$120.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the \$200.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent Dallas shall pay to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures

Public/Industry

/s/
Paul Sidney Elliott, Esq.
Chairperson

Public

/s/
John W. Platt

Industry

/s/
George H. Tucker

Public

Date of Decision: October 16, 1998