

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

9/97

Name of Claimant

Investech Capital Corp.

96-05411

Name of Respondent

Maurice A. Rappaport

REPRESENTATION

For Claimant Investech Capital Corp. ("Investech"): Jason W. Peck, Esq. of Lennard Peck, LC, Atlanta, Georgia.

Respondent Maurice A. Rappaport ("Rappaport") appeared pro se.

CASE INFORMATION

Statement of Claim filed: December 1, 1996.

Claimant's Submission Agreement/Corporate Acknowledgment signed: December 2, 1996 by Edward C. Bonawitz on behalf of the firm.

Statement of Answer and Counterclaim filed by Respondent: January 17, 1997.

Respondent's Submission Agreement signed: March 27, 1997.

Claimant's Reply to Counterclaim filed: April 9, 1997.

HEARING INFORMATION

On July 29, 1997 a telephonic Pre-Hearing Conference lasting one (1) session was conducted with the arbitration panel.

On August 15, 1997 a hearing lasting two (2) sessions was conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that this claim is for breach of contract and failure to make payment after placing an unsolicited purchase order; that on March 14, 1996, Respondent opened a new account and entered into a Client Account Agreement with Claimant; that at 10:11 a.m. on May 7, 1996 Respondent contacted Claimant to place an unsolicited purchase order for 10,000 shares of Comparator Systems Corp. (IDID) ("Comparator"); that Respondent requested that said shares were to be purchased at the market rate; that prior to placing the order, Edward C. Bonawitz ("Bonawitz"), Claimant's Chief Executive Officer, questioned Respondent as to Respondent's knowledge of that particular security; that Respondent

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explained that Comparator was a "hot" issue, as revealed on that day's CNN broadcast; that Respondent further stated that Comparator was capitalizing on a new "incredible" fingerprint identification product, and Respondent's other broker was purchasing Comparator as well. Claimant next alleged that Bonawitz reviewed Respondent's investment and financial profile and approved said unsolicited trade; that at 10:30 a.m. on May 7, 1996 the trade was executed by Claimant's clearing firm, Sterne, Agee and Leach, Inc. ("Sterne, Agee"); that on May 7, 1996, subsequent to said unsolicited trade, the NASD suspended trade of Comparator; that on May 9, 1996, Sterne, Agee sent Respondent a margin call in the amount of \$11,766.00; that on May 17, 1996, Claimant sent Respondent a notice that failure to make payment for said purchase before noon on May 21, 1996 would result in the liquidation of other securities held in Respondent's account; that Respondent again refused to make payment and, therefore, on May 21, 1996, Respondent's account was liquidated as follows: 1000 shares of Brooke Group Ltd. at \$5.62/share and 500 shares of Getty Petroleum Corporation at \$13.50/share, for a total liquidation in the amount of \$12,277.58. Claimant maintained that after Respondent failed to make payment and subsequent contractual liquidation, Respondent had a deficit balance with Claimant in the amount of \$7,791.14, including account interest charges through August 28, 1996 and that Respondent has refused to make payment of said amount in breach of item 6 of the Client Account Agreement.

Respondent alleged that on May 6 and 7, 1996 Mr. Scott Symons ("Symons") and Gene Goldbraykh ("Goldbraykh"), registered representatives with Investech, who advertised in the Bell South Yellow Pages Directory that they sold securities through Investech, called the Respondent and touted and solicited the purchase of Comparator; that specifically, they said that Comparator was a suitable investment for Respondent and misrepresented the facts by stating that Comparator had a new method of fingerprinting that was going to be adopted by American Express and Master Card. Respondent next alleged that Claimant knew that the foregoing was untrue; that Claimant acted in bad faith committing common-law fraud; that in touting the stock Claimant willfully conducted itself with intent to cheat Respondent knowing full well that Comparator was an unsuitable investment for Respondent in light of his age; that Bonawitz, Symons and Goldbraykh were aware that Comparator was a very speculative investment and that Respondent would lose all of his money. Respondent maintained that based upon the representations of Claimant's representatives he placed an order for 10,000 shares of Comparator; that two hours after the trade in question was placed Goldbraykh and Symons absconded; that their telephone was disconnected and their office was shuttered and they could not be found; that the state and FBI issued warrants against them and immediately thereafter Charles G. Maton was substituted as the broker and demands for payment were made by Bonawitz. Respondent asserted a counterclaim against Investech and alleged that his stock was liquidated and the proceeds were divided among Symons, Goldbraykh and Bonawitz; that Claimant was grossly negligent and committed a criminal act and gross malfeasance and that by soliciting the stock Claimant breached its fiduciary duty and trust in violation of Florida statutes and NASD rules and regulations.

In its reply to the counterclaim the Claimant denied the allegations contained therein and maintained that the claims by the Respondent were not supported by any facts that the Claimant could determine and were irrelevant to the matter at issue.

RELIEF REQUESTED

Claimant requested damages in the amount of \$7,791.14 representing the deficit balance in Respondent's securities account with Claimant; \$2,550.00 in attorneys' fees; reimbursement of the hearing session deposit of \$75.00; dismissal of the counterclaim; and, such other relief as the panel deemed appropriate.

Respondent requested a dismissal of the claim and relief on his counterclaim in the amount of \$52,584.07.

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 NASD Regulation, Inc.

AWARD

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

1. Respondent Rappaport is found liable and shall pay to the Claimant the sum of \$7,542.00, plus interest at the rate of 5% per annum from July 15, 1996 to August 15, 1997 in the sum of \$408.52 for a total due to Claimant of \$7,950.52.
2. Respondent Rappaport is found liable and shall pay to the Claimant attorneys' fees in the amount of \$2,550.00 pursuant to GCA, Inc. v. 90 S.W. 8th St. Enterprises, Inc. 22 Fla. L. Weekly D 1367 (Fla. 3rd DCA 1997).
3. Respondent's counterclaim is hereby denied.
4. Respondent Rappaport shall pay to the Claimant the sum of \$75.00 representing reimbursement of the hearing session deposit previously paid to NASD Regulation, Inc. by the Claimant.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure ("Code"), the panel has assessed forum fees in the amount of \$1,500.00 (two (2) hearing sessions x \$500.00 + one (1) Pre-Hearing conference (with the panel) x \$500.00).

1. Respondent Rappaport is hereby assessed forum fees in the amount of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$250.00 previously deposited by the Respondent and the \$75.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by the Respondent of \$1,175.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$150.00 paid by the Respondent.
3. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Claimant.
4. NASD Regulation, Inc. shall retain the member surcharge of \$100.00 paid by the Claimant pursuant to Rule 10333 of the Code.

Fees are payable to National Association of Securities Dealers Regulation, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Todd M. Saunders, Esq.

Public/Chairperson

/s/

Michael Dean

Industry/Panelist

Dissenting Arbitrator's Signature

/s/

Adam Harrison Smith, Esq.

Public/Panelist

Arbitrator Adam Harrison Smith, Esq. dissents as to paragraph two (2) of the Award but otherwise concurs in the decision.

Date of Decision: September 29, 1997