

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Isidro R. Mendoza

96-05547

Name of Respondents

Euro-Atlantic Securities, Inc.;
John Madden;
Jin Zhang

REPRESENTATION

For Claimant: Isidro R. Mendoza was represented by John A. Dienger, III, Esq. of Sedgwick, Detert, Moran & Arnold, located in Chicago, Illinois.

For Respondents: Euro-Atlantic Securities, Inc. did not appear. John Madden and Jin Zhang appeared pro se.

CASE INFORMATION

Statement of Claim filed: December 16, 1996.

Claimant's Submission Agreement signed on: February 24, 1997.

Statement of Answer filed by Respondent Zhang on: August 11, 1997.

Respondent Zhang's Submission Agreement signed on: July 25, 1997.

Statement of Answer filed by Respondent Madden on: July 23, 1997.

Respondent Madden's Submission Agreement signed on: July 25, 1997.

Euro-Atlantic Securities, Inc. did not answer or file an executed submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: October 8, 1997 for Three (3) sessions.

The record was left open for Claimant to submit certain additional documents that were not available as of the hearing date. These documents were received by the panel by November 3, 1997. Claimant's transmittal letter stated that the documents were provided to Respondents Zhang and Madden. Respondent Zhang replied to Claimant's first post-hearing submission in a letter to the panel dated October 21, 1997.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondents Zhang and Madden, while employed by or acting as an agent for Euro-Atlantic, recommended and purchased unsuitable securities, failed to properly diversify his account and engaged in unauthorized trading of the securities in his account after Mendoza expressly told Zhang to sell the securities in the account and hold the proceeds in cash. Based upon these allegations, Mendoza asserted claim for violation of the federal securities laws for manipulative and deceptive practices (Count 1) and unauthorized trades (Count 2); violation of the Illinois Consumer Fraud and Deceptive Practices Act (Count 3); and common law fraud (Count 4).

Respondent Zhang denied the material allegations of the Statement of Claim, alleging that Mendoza represented himself as a wealthy, sophisticated investor who refused to take Zhang's advice. In addition, Zhang alleged that Mendoza fully agreed and authorized every transaction, was in contact with Zhang several times a day, and praised Zhang's honesty and ability as a broker until this complaint was received.

Respondent Madden denied the material allegations of the Statement of Claim, asserting that Mendoza represented himself as a wealthy, sophisticated businessman and investor. In addition, Madden alleged that Mendoza represented that he was fully aware of the risks of a margin account, liked to speculate and did it often, and was in constant contact with Zhang to authorize every trade. In addition, Mendoza's praised Zhang's conduct and was in contact with him even after the losses occurred in the account.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for trading losses of \$25,150.59; pre-judgment interest of approximately \$4,800.00; attorneys' fees and costs.

Respondents Zhang and Madden requested that the claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Euro-Atlantic Securities did not appear at the hearing. Upon review, the panel determined that the party was not properly served, did not appear at hearing, and were not represented by the other named Respondents and therefore, the claims against Euro-Atlantic Securities, Inc. were dismissed without prejudice.

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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the post-hearing evidence received by the panel, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Jin Zhang is liable on Counts 1 and 2 and shall pay to Claimant Isidro R. Mendoza the sum of \$3,375.00 as actual damages, plus pre-judgement interest of \$236.25. Counts 3 and 4 are dismissed with prejudice as to Respondent Zhang;
2. In addition, Respondent Jin Zhang is liable for and shall pay to Claimant Isidro R. Mendoza the sum of \$1,204.00 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the arguments presented by the parties, and the evidence presented, and determined that authority existed for an award of attorneys' fees to the Claimant, Isidro R. Mendoza;
3. The claims against Respondent John T. Madden are dismissed with prejudice and denied in the entirety;
4. All remaining costs of arbitration, including any additional attorneys' fees, shall be borne by the party incurring the cost;
5. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Section 10333 of the Code of Arbitration Procedure, Euro-Atlantic Securities,

Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$200.00 as the member surcharge.

FORUM FEES

Pursuant to Section 10332© of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$400.00 per hearing session = \$1,200.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$100.00 hearing session deposit and, as forum fees, the \$50.00 balance paid on the hearing session deposit previously paid by Claimant. Respondent Jin Zhang is liable for and shall pay to the Claimant, Isidro R. Mendoza, the sum of \$150.00 as reimbursement of the sum retained by the NASD Regulation, Inc., Office of Dispute Resolution. Claimant Isidro R. Mendoza is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$383.33 as forum fees. Respondent Jin Zhang is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$383.34 as forum fees. In addition, Respondent John Madden is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$383.33 as forum fees.

Concurring Arbitrators' Signatures

Name

Date

/s/ David A. Youngerman, Esq.

December 25, 1997

David A. Youngerman, Esq.

Public Arbitrator

Chairperson

/s/ Champ W. Davis, Esq.

December 29, 1997

Champ W. Davis, Jr., Esq.

Public Arbitrator

/s/ Robert E. Waite

January 2, 1998

Robert E. Waite

Industry Arbitrator

For ODR Use Only-Date of Decision: January 6, 1998