

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

---

In the Matter of the Arbitration Between

Name of Claimant

Stephen A. Drake

96-05667

Names of Respondents

Nationwide Securities Corporation  
David Lavender

---

REPRESENTATION

Claimant Stephen A. Drake appeared pro se.

Respondent Nationwide Securities Corporation ("Nationwide") did not appear (see "Other Issues").

Respondent David Lavender ("Lavender") was represented by Brian H. Reis, Esq of the law firm of Goldstein, Goldstein & Reis, LLP of New York, New York. By letter dated October 30, 1997 Mr. Reis advised NASD Regulation, Inc. that he withdrew as counsel for Respondent Lavender and thereafter, Respondent Lavender appeared pro se.

CASE INFORMATION

Statement of Claim filed: December 23, 1996.

Claimant's Submission Agreement signed: December 19, 1996.

Respondent Nationwide did not file a Statement of Answer or an executed Submission Agreement/Corporate Acknowledgment.

Statement of Answer filed by Respondent Lavender: February 18, 1997.

Respondent Lavender's Submission Agreement signed: April 18, 1997.

HEARING INFORMATION

On October 22, 1997 the arbitrator conducted a telephonic pre-hearing conference with the parties.

On January 28, 1998 the arbitrator conducted an evidentiary hearing which lasted one (1) session in Fort Lauderdale, Florida.

**CASE SUMMARY**

Claimant alleged that Respondents failed to execute instructions that he gave them both orally and in writing in connection with the purchase of 2500 shares of Thermo Mizer Environmental ("THMZ") for his account at Nationwide. Claimant further alleged that Respondents failed to exercise reasonable due diligence regarding his financial wherewithal and that Respondents failed to inform him of the risk associated with the purchase of THMZ for his account. Claimant next alleged that Respondents neglected to inform him that Nationwide was the underwriter for THMZ, of the substitution of his broker and of the closing of the Nationwide office. Claimant maintained that after he sent the \$18,129.25 to Respondent Lavender for the purchase of the 2500 shares of THMZ he never heard from Lavender again despite numerous attempts to reach Lavender both by telephone and in writing.

Respondent Nationwide did not file a Statement of Answer.

Respondent Lavender denied the allegations of wrongdoing contained in the Statement of Claim and maintained that the investment at issue was consistent with Claimant's investment objectives and that no misrepresentations were made by Lavender. Lavender further maintained that no allegations of wrongdoing after March 28, 1996 can be attributed to him since he was not employed by Nationwide after March 28, 1996 and, therefore, this action should be dismissed against him and an award of attorneys' fees and forum fees should be awarded to Lavender.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$15,235.50 plus punitive damages.

Respondent Lavender requested dismissal of the claim and an award of attorneys' fees and forum fees.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondents Nationwide and Lavender did not attend the evidentiary hearing.

Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the arbitrator found subject matter jurisdiction over this entire controversy.

The arbitrator further found that Respondent Nationwide was a member of the NASD and that Respondent Lavender was a person associated with an NASD member firm at the time this controversy arose. Consequently, the arbitrator found personal jurisdiction over both Nationwide and Lavender pursuant to Rule 10301 of the Code.

In view of the above the arbitrator found that Respondent Nationwide was required to file with NASD Regulation, Inc. a Statement of Answer and properly executed Submission Agreement pursuant to Rule 10314(b) of the Code which it failed to do.

In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the arbitration panel found that NASD Regulation, Inc. provided Respondents Nationwide and Lavender with "due notice" of the hearing conducted in this matter. The arbitrator, therefore, determined to proceed with the hearing without Respondents Nationwide and Lavender present.

At the hearing the Claimant made an *oretenus* request to amended his Statement of Claim to include a request for punitive damages in the arbitrator's discretion which was granted by the Arbitrator.

**AWARD**

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

1. Respondents Nationwide and Lavender are found liable, jointly and severally, and shall pay to the Claimant compensatory damages in the amount of \$15,235.50, plus pre-judgment interest at the rate of 10% per annum from March 8, 1996 to the date of payment of the Award.
2. Respondents Nationwide and Lavender are found liable, jointly and severally, and shall pay to the Claimant punitive damages at three times the amount of the compensatory damages in the amount of \$45,706.50, pursuant to Davis v. Prudential Securities, Inc., 59 F.3d 1186 (11th Cir. 1995). The three times limit is based upon Florida Statute Section 768.73 (1) (a). This award of punitive damages is based upon the arbitrator's finding that there was malicious intent to defraud the Claimant by Respondents Nationwide and Lavender.
3. Respondents Nationwide and Lavender are found liable, jointly and severally, and shall pay to the Claimant the sum of \$400.00 which represents the claim filing fee of \$100.00 and the hearing session deposit of \$300.00 paid by the Claimant to NASD Regulation, Inc.
4. Respondent Lavender's requests for attorneys' fees and forum fees are hereby denied.

**FORUM FEES**

Pursuant to Rule 10332 (c) of the Code the arbitrator has assessed forum fees in the amount of \$600.00 (one pre-hearing conference x \$300.00 + one hearing session x \$300.00).

1. Respondents Nationwide and Lavender are hereby assessed forum fees, jointly and severally, in the amount of \$600.00 for which NASD Regulation, Inc. shall retain the \$300.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Respondents of \$300.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$100.00 paid by the Claimant.
3. Respondent Nationwide shall pay to NASD Regulation, Inc. the member surcharge of \$200.00 pursuant to Rule 10333 of the Code.

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

**ARBITRATOR**

Arbitrator's Signature

Public/Industry

\_\_\_\_\_  
Anthony J. Titone, Esq.  
(Sole Public Arbitrator)

Date of Decision: February 27, 1998