

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Joseph Genovese

vs.

Case No.
97-06044

Name of Respondents

Investors Associates, Inc.
Lawrence J. Penna
Herman Epstein
Troy V. Wren
Torin G. Greenspan

REPRESENTATION

For Claimant Joseph Genovese ("Claimant") appeared Joseph P. Carmichael, Esq., with law offices in Salem, Massachusetts.

Respondent Investors Associates, Inc. ("Investors Associates") did not enter an appearance in this matter.

Respondent Lawrence J. Penna ("Penna") did not appear at the hearing in this matter.

Respondent Herman Epstein ("Epstein") did not appear at the hearing in this matter.

Respondent Troy V. Wren ("Wren") did not appear at the hearing in this matter.

Respondent Torin G. Greenspan ("Greenspan") did not enter an appearance in this matter.

CASE INFORMATION

Claimant's Statement of Claim was filed on December 29, 1997.

Claimant's Submission Agreement was signed on December 19, 1997.

Respondent Investors Associates did not file a Statement of Answer or Submission Agreement.

Respondents Penna and Epstein's Joint Statement of Answer and Motion to Dismiss was filed on October 9, 1998.

Respondents Penna and Epstein did not file Submission Agreements.

Respondent Wren's Statement of Answer was filed on February 17, 1998.

Respondent Wren's Submission Agreement was signed on March 4, 1998.

Respondent Greenspan did not file a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences: May 18, 1998 - 1 session

Hearing Date/Sessions: March 23, 1999 - 2 sessions

The pre-hearing conference was conducted telephonically. The hearings were conducted at the offices of the American Arbitration Association, located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that Respondents mishandled the brokerage account which he opened in March, 1996. Claimant alleged that, specifically, Respondents: (1) fraudulently induced the purchase of securities by fabricating the investment characteristics of and likely returns from the securities, and failing to disclose material negative information concerning the securities; (2) manipulated the market for shares in securities sold to him; (3) failed to disclose to him that Investors Associates and its principals had egregious compliance records and were engaged in predation on the public; and (4) sold securities that were not registered in Massachusetts, in violation of the Massachusetts Securities Act.

Claimant contended that Respondents were liable on grounds of common law fraud, violations of the anti-fraud provisions of the 1933 and 1934 Securities Acts and the Massachusetts Securities Act, violation of securities registration provisions under the Massachusetts Securities Act, breach of contract, negligence/recklessness, and violation of Mass. Gen. L. Ann. Chapter 93A. Claimant further contended that Respondents Wren and Greenspan were liable under theories of control person liability and *respondeat superior*.

Respondents Penna and Epstein maintained that neither of them had ever transacted any business with Claimant. Penna and Epstein further maintained that they never communicated with Claimant or had any relationship with him of any nature. Penna and Epstein asserted that they did not cause Claimant's losses, either directly or indirectly. Penna and Epstein also asserted that they had no contract with Claimant and that Claimant never relied upon either of them. Penna and Epstein contended that Claimant suffered losses due to market forces and his own failure to mitigate damages. Penna and Epstein further contended that Claimant assumed the risks of his investments and now seeks to blame someone for his losses.

Penna and Epstein alleged that no facts exist which would permit Claimant to assert a direct

liability claim against them. Penna and Epstein contended that the predicates under theories of vicarious liability are not met. Penna and Epstein also contended that, as a matter of law, Claimant's claims are not actionable and, therefore, Claimant's claim should be dismissed.

Respondent Wren maintained that he spoke frequently with Claimant regarding his investments. Wren further maintained that he made sure to inform Claimant so that he was properly aware of all market risks. Wren contended that he did not speak to Claimant as frequently during the period of time in late 1996 when Greenspan was the representative who primarily handled Claimant's account. Wren further contended that, when Greenspan had left the firm, he resumed handling Claimant's account, relying upon top management for all financial data and due diligence materials. Wren denied all allegations of wrongdoing in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$86,114.00 for out-of-pocket losses, plus interest, costs, and attorney's fees. Claimant also requested punitive damages in the amount of \$10,000.00.

Respondents Penna and Epstein requested that claims against them should be dismissed in their entirety, and costs, in the amount of \$8,000.00, incurred in responding to the claim ought to be imposed against Claimant in their favor. Epstein and Penna also requested that the Panel award them such other and further relief as justice and equity require.

Respondent Wren requested a judgment in his favor.

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 original remains on file with NASD Regulation, Inc.

On March 22, 1999, the panel denied Respondent Wren's March 16, 1999 Motion to Appear telephonically. The panel determined that all parties were required to appear at the scheduled hearing on March 23, 1999.

Claimant amended the Statement of Claim at the hearing to request compensatory damages in the amount of \$96,003.09.

The panel made the following determinations concerning Investors Associates and Greenspan, who did not file a Statement of Answer or a Submission Agreement, Penna and Epstein, who did not sign a Submission Agreement, and all Respondents, who did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the

arbitrators found subject matter jurisdiction over this entire controversy.

2. The panel found that Investors Associates was a member of the NASD at the time this controversy arose. The panel also found that Penna, Epstein, Wren, and Greenspan were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over Investors Associates, Penna, Epstein, Wren, and Greenspan pursuant to Rule 10301 of the Code.
3. The panel found that Investors Associates and Greenspan were required to file a Statement of Answer and Submission Agreement and Penna and Greenspan were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Investors Associates, Greenspan, Penna, and Epstein pursuant to Rule 10314 (a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Investors Associates, Greenspan, Penna, Epstein, and Wren with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Investors Associates, Greenspan, Penna, Epstein, and Wren, whose absences were unexcused.

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. The panel found that all Respondents engaged in fraud upon Claimant;
2. Respondents Investors Associates, Penna, Epstein, Wren, and Greenspan are hereby jointly and severally liable and shall pay to Claimant the sum of \$96,003.09 in compensatory damages;
3. Respondents Investors Associates, Penna, Epstein, Wren, and Greenspan are hereby jointly and severally liable and shall pay to Claimant the sum of \$10,000.00 in punitive damages. Punitive damages are awarded pursuant to Lee v. Chica, 983 F.2d 883 (8th Cir. 1993); Todd Shipyards Corp. v. Cunard Line Ltd., 943 F. 2d 1056 (9th Cir. 1991); Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378 (11th Cir. 1988); and Mastrobuono v. Shearson Lehman Hutton, Inc., 812 F. Supp. 845 (N.D. Ill. 1993);
4. Respondents Investors Associates, Penna, Epstein, Wren, and Greenspan are hereby jointly and severally liable and shall pay to Claimant the sum of \$32,000.00, representing attorney's fees;

5. Respondents Investors Associates, Penna, Epstein, Wren, and Greenspan are hereby jointly and severally liable and shall pay to Claimant the sum of \$150.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD Regulation, Inc.;
6. Claimant's hearing session deposit of \$500.00 shall be refunded by NASD Regulation, Inc.; and
7. All other claims are denied.

OTHER COSTS

Respondent Wren is hereby liable and shall pay the sum of \$500.00, representing postponement fees.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that NASD Regulation, Inc. will retain the \$150.00 non-refundable filing fee paid by Claimant and have assessed the following Forum Fees:

1 pre-hearing conferences x \$500.00	=	\$ 500.00
2 hearing sessions x \$500.00	=	\$1,000.00
Total Forum Fees	=	\$1,500.00

Respondents Investors Associates, Penna, Epstein, Wren, and Greenspan are hereby jointly and severally liable and shall pay NASD Regulation, Inc. the sum of \$1,500.00, representing the total amount of forum fees assessed.

ARBITRATION PANEL

Gerard S. Marsan, Esq.	-	Public Chairperson
Clifford R. Wise	-	Public Arbitrator
Dayton P. Haigney, Jr.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

A handwritten signature in cursive script, appearing to read "Gerard S. Marsan", written over a horizontal line.


Gerard S. Marsan, Esq.

Date of decision: April 29, 1999

ARBITRATION PANEL

Gerard S. Marsan, Esq.	-	Public Chairperson
Clifford R. Wise	-	Public Arbitrator
Dayton P. Haigney, Jr.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

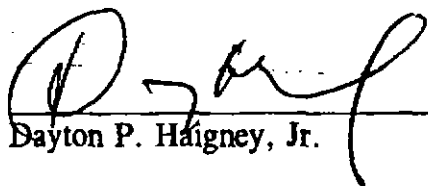

Clifford R. Wise

Date of decision: April 29, 1999

ARBITRATION PANEL

Gerard S. Marsan, Esq.	-	Public Chairperson
Clifford R. Wise	-	Public Arbitrator
Dayton P. Haigney, Jr.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Dayton P. Haigney, Jr.

Date of decision: April 29, 1999