

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

John D. Manske,

Claimant:

v.

No. 98-00021

Anthony G. Gilchrist, and
Sands Brothers & Company, LTD.,

Respondents.

REPRESENTATION OF PARTIES

Claimant John D. Manske ("Claimant") was represented by Mark E. Sanders, Esq. and Mary Beth Peranteau, Esq. of Halling & Cayo, S.C. located in Milwaukee, Wisconsin.

Respondent Anthony G. Gilchrist ("Gilchrist") was represented by Jonathan Kord Lagemann, Esq. of New York, New York.

Respondent Sands Brothers & Company, LTD. ("Sands Brothers") was represented by Peter K. Richardson, Esq. and Michael J. McDonagh, Esq. of Michael Best & Friedrich located in Milwaukee, Wisconsin.

CASE INFORMATION

The Statement of Claim was filed on or about January 2, 1998.

Claimant's Submission Agreement was signed on December 16, 1997.

The Joint Statement of Answer was filed on or about March 4, 1998.

Respondent Gilchrist and Sands Brothers' Joint Submission Agreement was signed on February 20, 1998.

HEARING INFORMATION

The telephonic pre-hearing was held on August 25, 1998 for one (1) session.

The hearing was held on December 17, 1998 for two (2) sessions, December 18, 1998 for two (2)

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) That Respondent Sands Brothers & Company, LTD is liable for and shall pay to Claimant John D. Manske compensatory damages in the amount of \$6,333.00, plus attorney fees and costs in the amount of \$17,000.00;
- (2) That Respondent Anthony G. Gilchrist is liable for and shall pay to Claimant John D. Manske of compensatory damages in the amount of \$3,167.00, plus attorney fees and costs in the amount of \$8,500.00;
- (3) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were eight (8) hearing sessions x \$400 = \$3,200 in forum fees. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. Total forum fees = \$3,500. Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited by the Claimant.

Pursuant to Rule 10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$766 (1/3 forum fees - hearing session deposit).

Pursuant to Rule 10332(c) of the Code, Respondent Sands Brothers is liable for and shall pay forum fees in the amount of \$1,167 (1/3 forum fees).

Pursuant to Rule 10332(c) of the Code, Respondent Gilchrist is liable for and shall pay forum fees in the amount of \$1,167 (1/3 forum fees).

sessions; January 13, 1999 for two (2) sessions, and February 1, 1999 for two (2) sessions. The hearing was held in Milwaukee, Wisconsin.

CASE SUMMARY

This dispute arose out of a brokerage account at Respondent Sands Brothers. Respondent Gilchrist was the registered representative assigned to Claimant's account.

In his Statement of Claim, Claimant alleged that Gilchrist sold him securities which were unsuitable in light of his conservative investment objectives of growth and preservation of principal, as well as his limited investment experience. Claimant further alleged that Gilchrist improperly churned his account for the purpose of generating commissions. During a four month period between July and October 1996, Claimant contended that purchases in his account totaled \$238,515, his monthly margin balance averaged approximately \$43,000, and Gilchrist's commissions totaled \$5,841.45. Claimant asserted that in this time period his average net investment was only \$35,862.44. Claimant maintained that his account was turned over approximately 20 times a year, resulting in losses of over \$34,000.

Respondents Gilchrist and Sands Brothers (collectively referred to as "Respondents") denied all liability to Claimant in their Joint Statement of Answer. Respondents alleged the securities which were purchased on margin did nothing to enhance or exacerbate any gains or losses. Respondents contended that all of the securities were purchased and sold only once, negating any inference of churning. Respondents maintained that the brokerage charges and margin interest were entirely appropriate, customary, and consistent with industry standards.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of the following: compensatory damages in the amount of \$34,261.42; statutory interest; costs and disbursements; attorney fees; and other relief deemed appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of their costs.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Sands Brothers has paid to NASD Regulation, Inc. the \$800 member surcharge and \$1,600 member process fees previously invoiced.

Pursuant to Rule 10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondent Sands Brother's postponement deposits in the amount of \$400 (1st postponement) and \$800 (2nd postponement).

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

Concurring Arbitrators' Signatures:

William B. Harris

William B. Ross
Chairperson
Public Arbitrator

2/15/99

Dated:

George R. Fleischli, Esq.
Panelist
Public Arbitrator

Dated:

Amy Wenzler
Panelist
Industry Arbitrator

Dated:

For NASD Regulation use only:
Date award served on parties:

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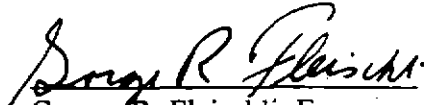
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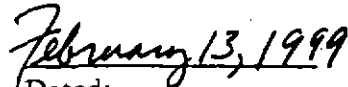
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2/18/99
Dated:

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Date award served on parties: _____