

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Robert A. Weiss, MD

vs.

98-00311

Name of Respondent

Investors Associates, Inc.
Michael DiFrancesca
Glenn Edward Lavender

REPRESENTATION

Claimant Dr. Robert Weiss ("Claimant") was represented by Dickee M. Howard, Esq., Howard Butler & Melfa, Towson, Maryland.

Respondent Glenn Edward Lavender ("Lavender") was represented by Robert Bertsch, Esq., Port Washington, New York.

Respondents Investors Associates, Inc. ("IA") and Michael DiFrancesca ("DiFrancesca") did not appear.

CASE INFORMATION

The Statement of Claim was filed January 26, 1998.

Amended Statement of Claim filed January 5, 1999.

Claimant's Uniform Submission Agreement signed December 17, 1999.

Respondent DiFrancesca's Statement of Answer filed March 8, 1998.

Respondent Lavender's Statement of Answer filed March 19, 1998.

Respondent Lavender's Uniform Submission Agreement executed February 24, 1998.

Respondent IA failed to submit a Statement of Answer.

Respondents IA and DiFrancesca did not submit executed agreements to arbitrate.

HEARING INFORMATION

Prehearing Conference Date: October 23, 1998

Hearing Date/Sessions: April 15, 1999/two sessions

Hearing Location: Mt. Vernon Hotel, Baltimore, Maryland

CASE SUMMARY

Claimant alleged that he was an unsophisticated investor who received a cold call from DiFrancesca, a registered representative of IA. Claimant also alleged DiFrancesca led Claimant to believe that he was a representative of Photo Derm VL, a company for which Claimant had participated in FDA trials. Claimant contended that DiFrancesca induced Claimant to open a trading account with IA and began to purchase unsuitable securities (stock and warrants) for Claimant's account, and to engage in unauthorized trading. Claimant alleged this trading resulted in serious losses to his account.

Claimant alleged DiFrancesca also made fraudulent misrepresentations when Claimant questioned the unauthorized purchases. Claimant asserted that on April 24, 1996 he sent a fax to DiFrancesca and directed him to cancel the second unauthorized trade and to close his account, but DiFrancesca refused to close Claimant's account and continued unauthorized trading in the account. Claimant alleged that in August of 1996 he received a telephone call from Lavender, who told Claimant that DiFrancesca had been fired because he was a "bad" broker and that Lavender was aware of the unauthorized trades in his account. In addition, Claimant contended Lavender said he would make money for Claimant and then proceeded to engage in the same unscrupulous trading as DiFrancesca, which resulted in additional losses in Claimant's account. Claimant also alleged that throughout the trading, IA failed to supervise either DiFrancesca or Lavender.

Respondent Lavender denied the allegations of wrong-doing as asserted by the Statement of Claim. In addition, Lavender raised the affirmative defenses of a failure to state a claim for which relief may be granted; that Claimant authorized and directed the execution of all transactions in the account; Lavender acted in good faith at all times; all recommendations were suitable based on Claimant's stated investment objectives; no causal connection between alleged losses and Lavender's actions; and that Claimant failed to plead fraud with particularity.

In his Statement of Answer, DiFrancesca denied the allegations of wrong-doing as asserted by Claimant. DiFrancesca raised the affirmative defenses of a failure to state a cause of action; a failure to mitigate damages; claims barred by doctrines of ratification, waiver and estoppel; assumption of risk; and the assertion that he acted within the laws, rules and regulations of the industry. DiFrancesca maintained that any losses suffered by Claimant were the result of market forces.

Respondent IA did not file a Statement of Answer.

RELIEF REQUESTED

Claimant requested actual damages of \$54,104.55, and amended the punitive damages request in the amount of \$450,000.00, interest, filing fees and counsel fees.

Respondent, Lavender requested that the Statement of Claim be dismissed in its entirety, that Respondent be awarded his costs and expenses and other relief as is proper.

In his Statement of Answer, DiFrancesca requested that the Statement of Claim be dismissed.

Respondent IA did not request relief.

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 the NASD.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent IA has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondent IA received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents IA and DiFrancesca did not file with the NASD Regulation, Inc. Office of Dispute Resolution ("NASD") properly executed submissions to arbitration, but are required to submit to arbitration pursuant to Rule 10301 of the Code and as DiFrancesca answered the claim, are bound by the determination of the arbitration panel on all issues submitted.

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 Respondents DiFrancesca and IA are jointly and severally liable to and shall pay to Claimant damages in the amount of \$19,000.00; and
2. That Respondents Lavender and IA are jointly and severally liable to and shall pay to Claimant damages in the amount of \$10,000.00; and

3. That the claim for punitive damages, interest and the costs of this arbitration are denied;
and
4. That each party shall bear its own costs and expenses, with the exception of forum fees
as specified below; and
5. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10319 of the Code, Claimant was assessed an adjournment fee of \$400.00 which has been paid.

Pursuant to Rule 10333 of the Code, IA was assessed a member surcharge of \$800.00, which was waived as IA is a terminated member.

FORUM FEES

Rule 10332 of the Code defines a hearing session as any meeting between the arbitrators and the parties, including a prehearing conference, which lasts four hours or less. Therefore, pursuant to Rule 10332, the following forum fees are assessed:

1 prehearing session x \$1,000.00 =	\$1,000.00
2 hearing sessions x \$1,000.00 =	<u>\$2,000.00</u>
Total Forum Fees =	\$3,000.00

The panel assessed forum fees at 25% to each party. Therefore, Claimant and each of the Respondents are assessed \$750.00.

Claimant shall receive credit for the \$700.00 hearing session deposit previously submitted to the NASD, leaving Claimant with a net assessment due of \$50.00.


Respondents IA, Lavender and DiFrancesca each have a forum fee assessment due of \$750.00.

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

DATE _____

June 1, 1959

CONCURRING ARBITRATORS' SIGNATURES


Morris J. Leyin, Chairman
Public Arbitrator

Lester Louis Adams
Public Arbitrator

Oscar W. Carlson, Jr.
Industry Arbitrator

Date Decision Served by NASD:

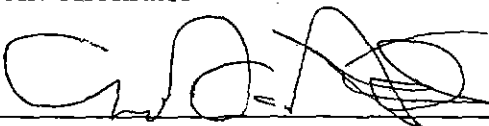
Date Decision Served by NASD: June 10, 1999

DATE

CONCURRING ARBITRATORS' SIGNATURES

6/7/99

Morris J. Levin, Chairman
Public Arbitrator



Lester Louis Adams
Public Arbitrator

Oscar W. Carlson, Jr.
Industry Arbitrator

Date Decision Served by NASD:

June 10, 1999

DATE

CONCURRING ARBITRATORS' SIGNATURES

Morris J. Levin, Chairman
Public Arbitrator

Lester Louis Adams
Public Arbitrator

5/28/99

Oscar W. Carlson, Jr.
Oscar W. Carlson, Jr.
Industry Arbitrator

Date Decision Served by NASD:

June 10, 1999