

NASD REGULATION, INC. AWARD

NASD Regulation, Inc., Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William Michael Malausky

Case No. 98-00333

Names of Respondents

Regions Investment Co., Inc.
Eric James Warner
Burton Arthur Linthicum
Barbara Gilbert
Rand H. Hinds, Jr.
R. Scott Seeley
Regions Bank

REPRESENTATION

The Claimant appeared pro se.

For Respondents R. Scott Seeley and Regions Bank: Robert P. Reynolds, Esq., Huntsville, Alabama.

For Respondents Regions Investment Co., Inc., Eric James Warner ("Warner"), Burton Arthur Linthicum ("Linthicum"), Rand H. Hinds, Jr. ("Hinds") and Barbara Gilbert ("Gilbert"): Stephen A. Rowe, Esq. of the law firm of Robinson & Somerville, LLP., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed: January 27, 1998.

Claimant's Submission Agreement signed on: January 23, 1998.

Statement of Answer filed by Respondents Regions Investment Co., Inc., Warner, Linthicum, Gilbert and Hinds on: May 11, 1998.

Respondents Linthicum, Regions Investment Co., Inc., Warner and Gilbert's Submission Agreements signed on: May 7, 1998.

Respondent Hinds' Submission Agreement signed on: May 6, 1998.

Respondents Regions Bank and R. Scott Seeley did not file executed Submission Agreements.

HEARING INFORMATION

A telephonic pre-hearing conference was conducted with a majority of the arbitration panel on July 21, 1998. The evidentiary hearing in this matter was conducted on September 16, 1998 in Atlanta, Georgia lasting a total of one session.

CASE SUMMARY

Claimant alleged that the question to be resolved in this case is whether Regions Investment Co., Inc. acted in the interest of their client or acted in collusion with Regions Bank. Claimant further alleged the following: Regions Investment Co., Inc. did not allow him to conduct his stock market transactions in an appropriate manner in accordance with his expectations; Respondents' actions (and/or lack of) resulted in significant financial losses to the Claimant; Respondents refused to let Claimant sell stock while they issued margin calls and slowly sold his stocks; Respondents did not adhere to the three day requirement for securing payments or for crediting accounts, and, there was questionable movement of money between Claimant's accounts. Claimant next alleged the following: Respondent Regions Investment Co., Inc. asserted that they acted on authorization from R. Scott Seeley, a Regions Bank vice president of commercial loans, however, Mr. Seeley only had a lien on Claimant's "cash" account, not on his "margin" account. Furthermore, Mr. Seeley had no authorization to freeze trading on any of Claimant's accounts as this would not have been in the best interest of any parties. Also, during this time, the Regions Investment Co. margin manager and Mr. Seeley did not respond to Claimant's faxes and/or telephone calls. Claimant maintained that Mr. Seeley submitted documentation demonstrating that on October 13, 1997, Respondents applied \$65,800.00 from his brokerage account to his loan balance, but, thereafter, on December 12, 1997, Mr. Seeley sent out a letter to three parties requesting that a sum of money be paid to Regions Bank that did not include the October 13, 1997 \$65,800.00 credit to the loan account. Mr. Seeley admitted to Claimant that he had made a mistake and promised that he would correct it and bringing this arbitration resulted in a post crediting to Claimant's loan account.

Respondents Regions Investment Co., Inc., Warner, Linthicum, Gilbert and Hinds alleged the following: that in 1995, Mr. Malausky started a business in Huntsville, Alabama known as Bernie's Bagels and Deli, Inc. He borrowed the money to open the business from Regions Bank. In addition to personally guaranteeing the debts of Bernie's Bagels & Deli, Inc., he assigned to Regions Bank a savings account which had a balance of \$65,800.00. In August of 1997, Mr. Malausky requested and was granted permission to withdraw money from the savings account to cover purchases of stock by Mr. Malausky in an investment account he had established at Regions Investment Co., Inc. This Agreement was confirmed in a letter of September 11, 1997. Mr. Malausky also granted both Regions Bank and Regions Investment Co., Inc. a security interest in the investment account. After this time, Mr. Malausky informed Regions Bank that he was closing Bernie's Bagel & Deli, Inc. Mr. Malausky missed loan payments to Regions Bank in August, September and October of 1997. By late October, 1997, Mr. Malausky was not only in default on his loan payments, but also had allowed the value of his checking account plus his savings account to fall below \$25,000.00. As previously noted, Regions Bank was granted a security interest in the Regions Investment Co., Inc. account up to \$65,800.00. On October 23, Regions Bank exercised its rights under the various agreements with Mr. Malausky and instructed Regions Investment Co., Inc. not to allow any further trading activity by Mr. Malausky in his account. The stock remaining in Mr. Malausky's account was ultimately sold, and the balance transferred to Mr. Malausky's savings account at Regions Bank and applied to his defaulted loans, pursuant to the terms of the agreements in place. Also, in late October, Mr. Malausky failed to meet several margin calls and stock was sold by Regions Investment Co., Inc. pursuant to its Margin Agreement to meet these various calls. Based on these facts, Respondents Regions Investment Co., Inc., Warner, Linthicum, Gilbert and Hinds denied that any money whatsoever is owed to Mr. Malausky.

RELIEF REQUESTED

Claimant requested damages in the sum of \$333,119.81 plus interest and expenses.

Respondents Regions Investment Co., Inc., Warner, Linthicum, Gilbert and Hinds requested a dismissal of all claims against them and that Claimant be required to pay all fees and expenses associated with this claim, including Respondents' attorneys' fees.

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.

At the commencement of the evidentiary hearing in this matter, Claimant conceded that the NASD had no jurisdiction over Respondents Regions Bank and R. Scott Seeley. Therefore, all claims against these Respondents were dismissed without prejudice.

AWARD

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

Regions Bank loan officer R. Scott Seeley stipulated at the hearing that Mr. Malausky would be given a credit of \$65,800.00 for the value of the trading account toward Mr. Malausky's outstanding loan, which is presently the subject of litigation in Alabama. For that reason, it is unnecessary for the Panel to resolve Mr. Malausky's complaints as to the handling of the trading account after it was seized by Regions Bank pursuant to its security agreement with Mr. Malausky. The Panel finds that Mr. Malausky has failed to carry his burden of proof that the Respondents violated applicable securities regulations or laws.

All claims by the Claimant against the Respondents Regions Investment Co., Inc., Eric James Warner, Burton Arthur Linthicum, Barbara Gilbert and Rand H. Hinds, Jr. are dismissed with prejudice.

Each party shall bear their respective costs including attorneys' fees.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Regions Investment Co., Inc. has paid to NASD Regulation, Inc. the \$1,500 member surcharge, the \$600.00 pre-hearing processing fee and the \$2,500.00 hearing processing fee.

Pursuant to Rule 10332 of the Code, Claimant has paid to NASD Regulation, Inc. the \$200.00 claim filing fee.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$1,500.00 (one pre-hearing conference-panel \$750.00 plus one session x \$750.00) are assessed as follows:

Claimant is assessed the sum of \$750.00 less the \$750.00 on deposit in full satisfaction thereof.

Respondents Regions Investment Co., Inc., Warner, Linthicum, Gilbert and Hinds are assessed, jointly and severally, the sum of \$750.00 less the \$750.00 on deposit in full satisfaction thereof.

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

Sidney R. Barrett, Esq.

Public

/S/

Lita S. Menkin, J.D.

Public

/S/

Ralph Bornheim

Industry

Date of Decision: October 8, 1998