

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Flynn D. Case, Claimant vs. Baxter, Banks & Smith, Ltd., F. Martin McDermott and Kevin Ruggiero, Respondents.

Case Number: 99-01653

Hearing Site: Portland, OR

REPRESENTATION OF PARTIES

Claimant, Flynn D. Case (hereinafter referred to as "Claimant"): Keith L. Hayes, Esq., Post Office Box 982, Salem, OR 97308.

Respondent, Baxter, Banks & Smith, Ltd. (hereinafter "Respondent Baxter, Banks & Smith, Ltd.") and F. Martin McDermott (hereinafter referred to as "Respondent McDermott"): F. Martin McDermott, Baxter, Banks & Smith, Ltd., 309 Fifth Avenue North, St. Petersburg, FL 33701.

Respondent, Kevin Ruggiero (hereinafter referred to as "Respondent Ruggiero"): *In pro per*, 459 Ridge Road, Apt 2B, Lyndhurst, NJ 07071.

CASE INFORMATION

Statement of Claim filed on or about: April 9, 1999

Claimant, signed the Uniform Submission Agreement: February 8, 1999

Statement of Answer filed by Respondent Baxter, Banks & Smith, Ltd. and Respondent McDermott on or about: November 1, 1999

Respondent Baxter, Banks & Smith, Ltd. and Respondent McDermott, did submit a Uniform Submission Agreement.

Respondent Ruggiero did not file an Answer or submit a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: Respondent Ruggiero misrepresented the present and future value of stock that Claimant purchased; Respondent Ruggiero solicited transactions in Oregon but was not licensed to do so; and Respondent Ruggiero made himself unavailable for Claimant's instructions regarding the sale of the subject stock.

Unless specifically admitted in its Answer, Respondents, Baxter, Banks & Smith, Ltd. and F. Martin McDermott denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was aware of all material risks concerning the investments, and knowingly, specifically, and expressly approved, directed and/or authorized the acts and

transactions which are the subject of the claim; the claims are barred by the doctrines of waiver, estoppel, and laches; Respondents' actions were not wrongful and did not directly or indirectly cause the actions alleged by the Claimant; Claimant is a knowledgeable and educated investor; Claimant's alleged losses were caused by market forces; Claimant failed to state a claim upon which relief can be granted; Respondents acted in good faith; Claimant ratified the transactions complained of; Claimant failed to exercise due diligence; and Claimant failed to properly plead causes of action.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$12,805.01
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Respondents, Baxter, Banks & Smith, Ltd. and F. Martin McDermott requested:

Attorneys' Fees	Unspecified
Non-Monetary Relief	All claims denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Ruggiero did not file with the NASD Dispute Resolution, Inc. a Statement of Answer or a properly executed submission to arbitration but is, as an Associated Person of the NASD, required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

No one representing any of the Respondents appeared at the September 19, 2000 arbitration hearing, and no one acting on behalf of any of the Respondents introduced evidence or gave testimony at the arbitration hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Ruggiero and Respondent Baxter, Banks & Smith, Ltd. are jointly and severally liable and shall pay Claimant the sum of \$12,805.01 and interest in the amount of \$2,555.13.
2. Respondent McDermott is not liable to the Claimant and the Claimant shall take nothing against him.
3. Forum fees and any other assessments are assessed against Respondent Ruggiero and Respondent Baxter, Banks & Smith, Ltd. joint and severally.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$125

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge for Respondent Baxter, Banks & Smith, Ltd. = \$400

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450	= \$900
Pre-hearing conferences: May 10, 2000	1 session
July 10, 2000	1 session
Two (2) Hearing sessions x \$450	= \$900
Hearing Dates: September 19, 2000	2 sessions
Total Forum Fees	= \$1800

The Arbitrator has assessed \$1800 of the forum fees joint and severally against Respondent Ruggiero and Respondent Baxter, Banks & Smith, Ltd.

Fee Summary

Claimant is hereby solely liable for:

<u>Initial Filing Fee</u>	= \$ 125
Total Fees	= \$ 125
<u>Less payments</u>	= \$ 450
Refund Due	(= \$ 325)

Respondents, Ruggiero and Baxter, Banks & Smith, Ltd., are hereby jointly and severally liable for:

<u>Forum Fees</u>	= \$1800
Total Fees	= \$1800

NASD Dispute Resolution, Inc.

Arbitration No. 99-01653

Award Page 4 of 5

<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1800

Respondent, Baxter, Banks & Smith, Ltd. is hereby solely liable for :

<u>Member Fees</u>	= \$400
Total Fees	= \$400
<u>Less Payment</u>	= \$400
Balance Due NASD Dispute Resolution, Inc.	

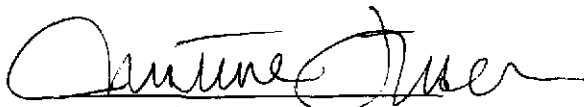
Balances are due to NASD Dispute Resolution, Inc. Inc. and are payable within 30 days of the service date of this Award.

NASD Dispute Resolution, Inc.

Arbitration No. 99-01653

Award Page 5 of 5

Concurring Arbitrator's Signature



Justine Fischer, Esq.

Public Arbitrator, Presiding Chair

October 6, 2000

Signature Date

Date Served:

OCT 16 2000

Date of Service (For NASD office use only)

Date Served:

OCT 16 2000