

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

John H. Lotz, Sr.

Case No. 99-01897

Names of Respondents

Barry Wheeler
Wheeler Securities, Inc.
Alex Rhoads

REPRESENTATION OF PARTIES

For John H. Lotz, Sr. ("Lotz"), hereinafter referred to as "Claimant": Pat Huddleston, II, Esq. and Teresa Harris Atkins, Esq. of the law firm of Dawson & Huddleston, Marietta, Georgia.

For Respondents Barry Wheeler ("B. Wheeler") and Wheeler Securities, Inc. ("Wheeler"): Barry Wheeler, President, Wheeler Securities, Inc.

Respondent Alex Rhoads ("Rhoads") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: April 22, 1999.

Claimant signed the Uniform Submission Agreement: March 8, 1999.

Statement of Answer filed by Respondent Rhoads on or about: July 2, 1999.

Respondent Rhoads signed the Uniform Submission Agreement: July 2, 1999.

Statement of Answer filed by Respondents B. Wheeler and Wheeler on or about: July 6, 1999.

Respondent Wheeler signed the Uniform Submission Agreement: July 2, 1999

Respondent B. Wheeler did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following: Claimant, an elderly retiree, alleged that Respondent B. Wheeler, the President of Wheeler, engaged in excessive and unsuitable trading, used margin without authorization, and made negligent misrepresentations and omissions to Claimant, breaching his legal and fiduciary duties to Claimant, and committing common law fraud. As the manager of Claimant's accounts and the supervisor over which it exercised unfettered control, Respondent Wheeler is primarily liable for the damages Claimant suffered. As the employer of B. Wheeler, Wheeler is likewise liable under respondeat superior. Wheeler is

also liable as a "controlling person" of its employees under Section 20A of the Securities Exchange Act of 1934. Respondent Rhoads is liable as one of the registered representatives who made trades in Claimant's accounts.

Respondents B. Wheeler and Wheeler asserted the following: Claimant understood the risks inherent in the type of investing he engaged in; Claimant was willing to assume those risks; and, Claimant was kept informed of the status of his investments at all times.

Unless specifically admitted in his Answer, Respondent Rhoads denied the allegations contained in the Statement of Claim.

RELIEF REQUESTED

Claimant requested damages for lost opportunity of over \$111,000.00, damages for the excessive commissions, attorneys' fees, filing fees, damages for the excessive taxes Claimant had to pay, and punitive damages.

Respondent Rhoads requested that the claims against him be dismissed plus an award of his costs and attorneys' fees.

Respondents B. Wheeler and Wheeler requested that they not be held liable for Claimant's losses.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent B. Wheeler did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

On or about February 3, 2000, Claimant informed NASD Regulation, Inc. that he had dismissed, with prejudice, all claims against Respondent Alex Rhoads.

AWARD

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

Respondents Barry Wheeler and Wheeler Securities, Inc. are liable, jointly and severally, and shall pay to Claimant the sum of \$50,000.00.

Claimant's request for punitive damages is denied.

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

All other requests for relief not specifically addressed herein are denied.

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 = \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$600.00

Hearing process fee = \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

February 22-25, 2000 Hearing Dates, adjournment by Claimant = \$1,125.00

March 20-23, 2000 Hearing Dates, adjournment by Claimant = Fee waived by panel

Forum Fees and Assessments

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

One Pre-hearing session with Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: October 21, 1999 1 session

Four Hearing sessions x \$1,125.00 = \$4,500.00

Hearing Dates: May 15, 2000 2 sessions

May 16, 2000 2 sessions

Total Forum Fees = \$5,625.00

The Panel has assessed \$2,812.50 of the forum fees to Claimant.

The Panel has assessed \$2,812.50 of the forum fees to Respondents Wheeler Securities, Inc. and Barry Wheeler, jointly and severally.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$2,812.50
Total Fees	= \$4,237.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

Respondent Wheeler be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$2,100.00</u>
Balance Due NASD Regulation, Inc.	= \$2,500.00

Respondents Barry Wheeler and Wheeler Securities, Inc. be and hereby are jointly and severally liable for:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

_____/s/_____
Michael J. Ahlstrom, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/s/_____
David K. Weiskircher
Public Arbitrator

Signature Date

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/s/

Thomas Scott Watkins, J.D.
Industry Arbitrator

Signature Date

May 25, 2000
Date of Service (For NASD office use only)

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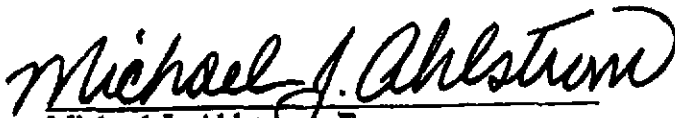
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Michael J. Ahlstrom, Esq.
Public Arbitrator, Presiding Chair

5-19-00
Signature Date

David K. Weiskircher
Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

David K. Weiskircher
Public Arbitrator

Signature Date

5/19/00

Signature Date

Industry Arbitrator

Signature Date

Date of Service (For N. SD office use only)