



N.A.S.D. BOARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
15 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant

Robert Schaefer

91-00014

Name of Respondent

Jack Fernandez

REPRESENTATION

For Claimant Robert Schaefer ("Claimant"): Walter D'Ull, a sole practitioner.

For Respondent Jack Fernandez ("Respondent") : Jack Fernandez, who is not an attorney. Respondent was not present during the hearing, nor did he send a representative. Previously, Respondent was represented by Edwin Kagan, a sole practitioner.

CASE INFORMATION

Statement of Claim filed: there was no date on the Statement of Claim. It was received by the NASD on: January 2, 1991.

Claimant's Submission Agreement signed on: December 28, 1990.

Statement of Answer filed by Respondent, Jack Fernandez on: March 5, 1991.

Respondent, Jack Fernandez's Submission Agreement signed on: March 5, 1991.
Respondent's Motion to Bar Presentation of Evidence signed on: April 22, 1991.

Respondent's Motion to Dismiss and/or Strike signed on: March 5, 1991.

HEARING INFORMATION

Hearing Date/Sessions: September 26, 1991/1 session.

Hearing Location: NASD/New York, New York.

CASE SUMMARY

Claimant alleged Respondent stated, during an October 1989 phone

WARD
#91-00014

National Association of
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conversation, that Strategic Communications ("Strategic") would rise to \$1.00 within two (2) weeks time. (Claimant represented that he taped many, if not all, of their conversations). Claimant asserted he relied on Respondent's advice and informed him that he was a teacher with \$25,000.00 in a mutual fund and some money he had borrowed from his pension fund. Claimant stated he told Respondent he had no other income and that these funds were for his retirement. Claimant stated he told Respondent he had lost everything a few years ago; however, Claimant stated Respondent assured him this was a risk free situation and gave the impression he had inside information regarding this purchase.

Claimant stated he sold his mutual fund to raise the money, whereby Respondent bought 25,000 shares at \$.55 and 20,000 shares at \$.61 in a joint account under an assumed name. Claimant stated Respondent claimed he was not permitted to open an account of more than 25,000 shares. Claimant alleged Respondent guaranteed he had a buyer for the shares at a minimum price of \$.85. Claimant stated the stock rose, but did not reach \$1.00 at the end of one month and Claimant then asked to sell some shares. Claimant stated Respondent asserted it could not be sold yet, Claimant should trust him and if there was ever a problem with the stock Respondent would "get me out first". Claimant stated Respondent assured him there was no problem with the stock when the price began to fall. Claimant alleged he was not able to pay for all the shares when he bought them; however, Respondent said there would be no problem.

Claimant alleged Respondent made fraudulent statements regarding the risk of Strategic Communications.

Claimant alleged Respondent misrepresented the risk in Seven Mile High (in which Claimant invested) when he claimed a Swedish company had bought \$30,000.00 worth of shares, yet the stock then went down in value.

Claimant alleged American Aircraft was bought at an average price of \$1.25; however, when the price rose to \$1.69, Respondent refused to speak with him except once when he stated "everything was fine". When the stock had fallen to \$.73 and Respondent sold Claimant's shares, Claimant asserted Respondent stated he did not place Claimant in any other position because he had nothing to place him in. Claimant alleged he had instructed Respondent to sell if the situation indicated he should.

Finally, Claimant alleged Respondent did not arrive at pre-arranged meetings and on September 17, 1990 threatened him.

Respondent denied making statements to Claimant that there was little or no risk in trading the securities that are the subject of the Statement of

AWARD
#91-00014

National Association of
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Claim. Respondent stated Claimant was a sophisticated investor who was aware of the risk of investing in the types of securities he is complaining about.

Respondent denied stating that any particular stock would rise in price; that he had a buyer at a certain price for Claimant's stock; or that he would sell Claimant's stock and get him "out first".

Respondent denied inducing the purchases of Strategic and Seven Mile High and stated Claimant initiated most of the phone conversations mentioned in the Statement of Claim.

Respondent denied effecting any of Claimant's transactions involving Seven Mile High and that Claimant requested Respondent effect such transactions that would maximize his gains notwithstanding the risk.

Respondent denied making statements to Claimant with scienter, with knowledge of falsity or reckless disregard for the truth.

Respondent alleged, on his Counterclaim, that at no time did Claimant disclose to Respondent the phone conversations were being tape-recorded and that under Chapter 934, Florida Statutes these actions are proscribed.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$38,000; treble damages; interest; and attorneys' fees in the amount of \$12,500.00.

Respondent, on his Counterclaim, requested: the Arbitration Panel find that Claimant violated the provisions of Chapter 934, Florida Statutes, and award Respondent actual damages not less than \$100.00 per day for each day of violation or \$1,000.00, whichever is higher; punitive damages in the amount of \$100,000.00; attorneys' fees and costs.

AWARD

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

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:

AWARD
#91-00014

- 1- Respondent is hereby liable and shall pay to Claimant the sum of THIRTY SEVEN THOUSAND NINE HUNDRED FOUR 00/100 DOLLARS (\$37,904.00), plus interest at the rate of nine percent (9%) per annum from September 26, 1991 until the date of payment. Pre-award interest is specifically excluded;
- 2- Respondent's Counterclaim is denied in all respects;
- 3- Respondent's Motion to Strike is denied;
- 4- Respondent's Motion to Bar Presentation of Evidence is denied;
- 5- All other claims are dismissed.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 non-refundable filing fee and \$500.00 hearing session deposit previously deposited and the following Forum Fees are assessed.

1 session X \$500.00 = \$500.00

Forum fees Assessed Against:

- 1- Respondent, in the amount of \$500.00. Respondent is also ordered to reimburse to Claimant the \$500.00 hearing session deposit;

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

 /s/
Bernard G. Pressner/Public Arbitrator

 /s/
Richard Ryder/Industry Arbitrator

 /s/
Robert Seaman/Public Arbitrator

Date of Decision: November 4, 1991

AWARD
#91-00014

REPORT OF ARBITRATORS

The arbitration panel in the above-referenced matter has ordered that this matter be referred to the NASD District Business Conduct Committee for further investigation of the trading activity which took place in Claimant's account as well as the specific conduct to the Respondent.

STATE OF *New York*

S.S.:

COUNTY OF *New York*

On this *25th* day of October, 1991, before me personally appeared Robert Seaman known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Susan J. Unger

SUSAN J. UNGER
NOTARY PUBLIC, State of New York
No. 4971327
Qualified in Nassau County
Commission Expires September 4, 19*92*

STATE OF *New York*
COUNTY OF *New York*

S.S.:

On this *16* day of October, 1991, before me personally appeared Richard P. Ryder known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Isabella Ferrigno

ISABELLA FERRIGNO
Notary Public, State of New York
No. 24-4971763
Qualified in Kings County
Commission Expires Sept. 10, 1992

STATE OF *Connecticut*
COUNTY OF *Fairfield*

S.S.:

On this *28th* day of *October* 1991, before me personally appeared Bernard Pressner known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Annette Barker

ANNETTE BARKER
Commissioner of Deeds for Conn.
Commission Expires Sept. 23, 1993