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AWARD
NASD REGULATION, INC.

In the Matter of the Arbitration Between: Walter A. Moede, Jr., Claimant
v.
Web Street Securities, Inc., Johnny Fiscus, and Edward McCarthy, Respondents

Case Number: 01-00806

2003 NASD Arb. LEXIS 141

January 30, 2003

COUNSEL:

[*1] Claimant Walter A. Moede, Jr. ("Moede") was represented by Laurence M. Landsman, Esq. of the firm **Block & Landsman** located in Chicago, Illinois.

Respondent Web Street Securities, Inc. ("Web Street") was represented by Michael T. Foley, Esq. of the firm Katten Muchin Zavis located in Chicago, Illinois.

Respondent Johnny Fiscus ("Fiscus") appeared pro se.

Respondent Edward McCarthy ("McCarthy") appeared pro se.

CASE-INFORMATION:

Claimant Moede signed the Uniform Submission Agreement: February 13, 2001.

Respondent Web Street signed the Uniform Submission Agreement: April 12, 2001.

Respondent Fiscus signed the Uniform Submission Agreement: April 11, 2001.

Statement of Claim filed on or about: February 16, 2001.

Statement of Answer filed by Respondent WebStreet on or about: December 14, 2001.

Statement of Answer filed by Respondent Fiscus on or about: April 16, 2001.

Amended Statement of Claim filed on or about: November 14, 2001.

Respondent Web Street's Amended Statement of Claim filed on or about: December 13, 2001.

Claimant's Arbitration Brief filed on or about: November 18, 2002.

Respondent Web Street's Arbitration Brief filed on or about: November 19, 2002.

Hearing Site: Chicago, Illinois

CASE-SUMMARY:

Claimants [*2] Moede asserted the following causes of action: breach of fiduciary duty; failure to supervise; control person liability; unsuitability; Illinois Consumer Fraud violations; civil conspiracy; and common law fraud.

The causes of action relate to the use of Claimant's account to fund investments in public and private debt and equity markets, investments in real estate, and trading of derivative instruments.

Unless specifically admitted in its Answer, Respondent Web Street denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Web Street is not a New York Sock Exchange member and therefore NYSE Rules do not apply;

2. There is no private cause of action for any violation of NYSE Rules;
3. Web Street did not, directly or indirectly, share in the profits or losses in Claimant's account
4. Claimant assumed the risk of his alleged losses;
5. Claimant failed to mitigate damages;
6. At all relevant times, Web Street provided sufficient training to its supervisory personnel;
7. Web Street did not encourage Ficus' solicitation of Claimant, oversee the account, or have any duties with respect to Claimants account;
8. Claimant is barred by estoppel and or [*3] unclean hands;
9. Web Street does not have the duty to supervise the conduct of former employees or employees that act outside the scope of their authority;
10. Web Street acted in full compliance with all applicable statutes, rules and regulations;
11. Web Street did not enter into an agreement to participate in an unlawful act or a lawful act in an unlawful manner; and
12. Web Street did not cause Claimant's alleged losses.

Unless specifically admitted in his Answer, Respondent Fiscus denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Fiscus did not solicit Claimant, rather Claimant repeatedly ask for his assistance;
2. Claimant represented that he was an experienced investor;
3. Fiscus was not a registered representative of Web Street; and
4. Fiscus did not defraud or intend to defraud Claimant.

RELIEF-REQUESTED:

Claimant Moede requested:

Compensatory Damages	\$ 330,000.00
Punitive Damages	\$ 100,000.00
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	as panel deems appropriate

Respondent Web Street requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	that the claims filed against it be dismissed in their entirety

[*4]

OTHER-ISSUES:

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators the "Panel" determined that Respondent Johnny Fiscus and Edward McCarthy have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Pursuant to Rule 10328 of the Code, the panel accepted the Claimant's Amended Statement of Claim.

Respondent Edward McCarthy did not file with NASD Dispute Resolution, Inc. a properly executed submission to

arbitration. Notwithstanding, he is required to submit to arbitration pursuant to Rule 10301 of the Code and is bound by the determination of the Panel on all issues. submitted.

On January 10, 2003 Claimant Moede notified NASD that he had settled his claims with respect to Respondent Web Street. As a consequence, the Panel did not adjudicate these claims.

AWARD:

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

1. [*5] Respondents Johnny Fiscus and Edward McCarthy are jointly and severally liable for and shall pay to Claimant Walter A. Moede, Jr. the sum of \$ 210,000.00 as compensatory damages. As a consequence of the settlement reached between Claimant Walter A. Moede, Jr. and Respondent Web Street Securities, Inc. on January 28, 2003, Respondents Johnny Fiscus and Edward McCarthy are entitled to setoff against the amount of compensatory damages assessed against them by the Arbitration Panel any monies paid to Claimant Walter A. Moede, Jr. by Respondent Web Street Securities, Inc. in accordance with that settlement. Accordingly, the Arbitration Panel hereby orders Claimant Walter A. Moede, Jr. to disclose to Respondents Johnny Fiscus and Edward McCarthy the amount of the monetary settlement agreed to with Respondent Web Street Securities, Inc. for purposes of calculating any setoff.
2. Respondent Johnny Fiscus is solely liable for and shall pay to Claimant Walter A. Moede, Jr. the sum of \$ 75,000.00 as punitive damages. After considering the arguments, pleadings, and briefs, the Panel has determined that it has the authority to make an award of punitive damages.
3. Respondent Edward McCarthy [*6] is solely liable for and shall pay to Claimant Walter A. Moede, Jr. the sum of \$ 25,000.00 as punitive damages. After considering the arguments, pleadings and briefs, the Panel has determined that it has the authority to make an award of punitive damages.
4. Unless specified otherwise herein, the parties shall each bear their own costs, including attorneys' fees.
5. Any and all other relief not specifically addressed herein is denied.

FORUM-FEES:

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Webstreet Securities, Inc. is responsible for the following fees.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 2,500.00

Total = \$ 4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Claimant requested adjournment [*7] of the hearing dates set for July 16-18, 2002. = \$ 1,125.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel at \$ 1,125.00 = \$ 1,125.00

Pre-hearing conference: December 04, 2001 1 session

Seven (7) Hearing sessions at \$ 1,125.00 = \$ 7,875.00

Hearing Dates: December 09, 2001 2 sessions

December 10, 2001 2 sessions

December 11, 2001 2 sessions

December 23, 2001 1 session

Total Forum Fees = \$ 9,000.00

1. The Panel has assessed \$ 1,125.00 of the forum fees to Walter A. Moede, Jr.

2. The Panel has assessed \$ 7,875.00 of the forum fees jointly and severally to Web Street Securities, Johnny Fiscus and Edward McCarthy.

FEE SUMMARY

1. Claimant Walter A. Moede, Jr. is solely liable for:

Initial Filing Fee = \$ 300.00

Adjournment Fee = \$ 1,125.00

Forum Fees = \$ 1,125.00

Total Fees = \$ 2,550.00

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution, Inc. = \$ 1,125.00

2. Respondent [*8] Webstreet Securities, Inc. is solely liable for:

Member Fees = \$ 4,600.00

Total Fees = \$ 4,600.00

Less payments = \$ 4,600.00

Balance Due NASD Dispute Resolution, Inc. = \$ 0.00

3. Respondents Web Street Securities, Inc., Johnny Fiscus, and Edward McCarthy are jointly and severally liable for:

Forum Fees = \$ 7,875.00

Balance Due NASD Dispute Resolution, Inc. = \$ 7,875.00

All balances are payable to NASD Dispute Resolution, Inc. and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATORS:

Concurring Arbitrators: Bonnie L. Macfarlane, Esq., Public Arbitrator, Presiding Chairperson; David G. Duggan, Esq., Public Arbitrator; Willaim J. Bayer, Non-Public Arbitrator