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AWARD
NASD REGULATION, INC.

In the Matter of the Arbitration Between Michael R. Fumo, Claimant
v.
Access Financial Group, Inc., Respondent

CASE NO. 02-02524

2004 NASD Arb. LEXIS 3349

November 18, 2004

COUNSEL:

[*1] Alan F. Block, Esq., of the firm **Block & Landsman** located in Chicago, Illinois represented Claimant Michael R. Fumo (Fumo).

Jennifer M. Tryzna, Esq., in-house counsel for Access Financial Group, Inc., located in Chicago, Illinois. Gregg Rzepczynski, Esq., of the firm Bevilacqua & Rzepczynski, PC located in Chicago, Illinois also represented Respondent Access Financial Group, Inc., (Access Financial).

CASE-INFORMATION:

Claimant filed the Statement of Claim on or about April 30, 2002. Claimant Fumo signed the Uniform Submission Agreement on April 19, 2002.

Respondent filed a Statement of Answer on July 16, 2002 and signed the Uniform Submission Agreement on July 28, 2002.

Respondent filed a Motion for Leave to File Third-Party Complaint on or about August 27, 2004. Claimant filed a Response on September 13, 2004.

HEARING-DOCKET:

Hearing Site: Chicago, Illinois

NATURE OF THE DISPUTE: Customer v. Member Firm

CASE-SUMMARY:

Claimant Fumo asserted the following causes of action: failure to execute, breach of fiduciary duty, and negligence.

The causes of action relate to the U.S. Tobacco stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following [*2] defenses: the claim is barred by the doctrines of estoppel and ratification; Respondent acted in good faith and at no time acted intentionally, negligently or recklessly; Claimant had full knowledge of all material facts and did not rely on any act or omission allegedly made by the Respondents; and any loss Claimant suffered was caused by his own conduct.

RELIEF-REQUESTED:

Claimant Fumo requested compensatory damages in the amount of \$ 250,000.00, interest, attorney's fees, costs, and any

such relief the Panel deems just and equitable.

Respondent requested denial and dismissal of claims.

OTHER-ISSUES:

In an order dated September 21, 2004 the Panel denied Respondent's Motion for Leave to File a Third-Party Complaint.

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. Access Financial Group, Inc., is solely liable for and shall pay to Michael R. Fumo the sum of \$ 215,625.00 for failure to execute order.
2. Access Financial Group, Inc., is solely liable for and shall pay to Michael R. Fumo the sum of \$ 13,200.00 for lost dividends.
3. Access Financial Group, Inc., is solely [*3] liable for and shall pay to Michael R. Fumo the sum of \$ 1,875.00 for disgorgement of the principal trades.
4. Except for the forum fees associated with this matter, which are specified herein, the parties shall bear their own costs, including attorney's fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FORUM-FEES:

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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, Access Financial, as a party, is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total	= \$ 5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Claimant requested adjournment of the February 27-28, 2003 hearing dates

= \$ 1,125.00

The parties [*4] jointly requested adjournment of the June 17-18, 2003 hearing dates

= \$ 1,125.00

Respondent requested adjournment of the February 10-11, 2004 hearing dates

= \$ 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:

Three (3) Pre-hearing sessions

with Panel at \$ 1,125.00 = \$ 3,375.00

Pre-hearing conferences:	November 1, 2002	1 session
	September 15, 2003	1 session
	September 21, 2004	1 session

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

Hearing Dates:	October 19, 2004	2 sessions
	October 20, 2004	2 sessions
	October 21, 2004	2 sessions
	October 22, 2004	1 session

Total Forum Fees = \$ 11,250.00

The Panel assessed \$ 11,250.00 of the forum fees to Access Financial Group, Inc.

FEE SUMMARY

Claimant Michael R. Fumo is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,687.50
Total Fees	= \$ 1,987.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

[*5]

Respondent Access Financial is solely liable for:

Member Fees	= \$ 5,200.00
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Adjournment Fee	= \$ 1,687.50
Forum Fees	= \$ 11,250.00
Total Fees	= \$ 18,137.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 12,937.50

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

ARBITRATORS:

Concurring Arbitrators: Bernard B. Bell, Public Arbitrator, Presiding Chairperson; Gus E. Glick, Public Arbitrator; Joseph D. Savino, Non-Public Arbitrator