

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of Claimant

Kevin P. and Jill Walker

Case No. 00-05266

Names of Respondents

D.L. Cromwell Investments, Inc.
Francis Louis Smookler, Jr.

Hearing Site: Charlotte, North Carolina

REPRESENTATION OF PARTIES

For Kevin P. and Jill Walker, hereinafter referred to as "Claimant": Nicholas D. Thomas, Esq., Raleigh, North Carolina.

For D.L. Cromwell Investments, Inc., hereinafter referred to as "Cromwell": Andrew Fulton IV, Esq., Ward, Damon, Posner & Gilbert, P.A., West Palm Beach, Florida.

For Francis Louis Smookler, Jr., hereinafter referred to as "Smookler": Andrew Fulton IV, Esq., Ward, Damon, Posner & Gilbert, P.A., West Palm Beach, Florida. On or about March 6, 2001, Adam Silverstein, Esq., Law Offices of Adam Silverstein, P.C., Hackensack, New Jersey, substituted as counsel for Respondent Smookler.

CASE INFORMATION

Statement of Claim filed on or about: November 21, 2000.

Claimant signed the Uniform Submission Agreement on: November 14, 2000.

Statement of Answer filed by Respondents on or about: February 9, 2001.

Respondent Cromwell signed the Uniform Submission Agreement on: January 26, 2001.

Respondent Smookler signed the Uniform Submission Agreement on: March 14, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of the anti-fraud provisions of the North Carolina Securities Act; 2) common law fraud; 3) breach of fiduciary duty; and 4)

negligence and gross negligence. The causes of action relate to investments in shares of common stock in Big City Bagels and investments in warrants in Big City Bagels.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) the Statement of Claim fails to state a legally or factually viable claim or cause of action; 2) Claimant knowingly assumed the risks of investing in the stock market and the securities at issue; 3) Claimant is barred from recovery by the doctrines of waiver and/or estoppel; 4) Claimant was a sophisticated and experienced investor; 5) there was full and accurate disclosure of the securities at issue and the risk inherent therein; 6) the securities at issue were suitable to Claimant and appropriate due diligence was performed; 7) Claimant's claims, in whole or in part, are barred by the economic loss doctrine; 8) Claimant's claims, in whole or in part, are governed by the limitations under Florida law and the NASD Code of Arbitration Procedure; 9) Claimant's claims, in whole or in part, are governed by the limitations under North Carolina law; 10) Claimant's recovery should be barred or reduced by Claimant's proportionate share of fault due to Claimant's own negligence; 11) Claimant failed to mitigate damages by not liquidating positions in a timely fashion; 12) Claimant's losses were the result of negligence and/or intentional misconduct of third parties over which Respondents Cromwell and Smookler had no control; therefore, Claimant's recovery from Respondents Cromwell and Smookler should be barred or reduced by the proportionate share of fault of such third parties; 13) Respondents Cromwell and Smookler are entitled to a set-off for any amounts paid by any third party in settlement relating to the investments at issue; 14) Claimant's claims are time barred by the applicable statutes of limitations and doctrine of laches; 15) there is no private cause of action under the rules of the NASD or any other self-regulating organization; 16) Respondents Cromwell and Smookler are entitled to a set-off for any or all amounts received by Claimant in liquidating the stock at issue; 17) Respondents Cromwell and Smookler are entitled to a set-off for the residual value of the stock at issue which is still within Claimant's possession; 18) Respondents Cromwell and Smookler are entitled to a set-off for any tax write-off claimed by Claimant in connection with the investments at issue; 19) Claimant is not entitled to attorneys' fees in arbitration, and Claimant has not plead a statutory or contractual basis for attorneys' fees; 20) Claimant failed to alleged conduct which is so egregious to give rise to an award of punitive damages; 21) Claimant has failed to fulfill all conditions precedent to bringing a claim for punitive damages as provided for under Section 768.72, Florida Statutes; and 22) Claimant's claim for punitive damages is limited under Florida law and/or North Carolina law.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages, disgorgement of commissions and punitive damages in an amount in excess of \$100,000.01 and less than \$500,000.00; 2) interest at the statutory rate of 8%; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim; 2) cost; 3) attorneys' fees;

and 4) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On December 18, 2001, Respondent Cromwell filed its motion to appear telephonically at the evidentiary hearing. At the commencement of the evidentiary hearing, the Panel heard oral arguments by the parties. The Panel afforded Respondent Cromwell an opportunity to participate telephonically during the presentation of Claimant's case-in-chief on December 19, 2001 with the understanding that Respondent Cromwell would appear in-person to present its case-in-chief on December 20, 2001. Respondent Cromwell advised that it would not participate in-person on December 20, 2001. Therefore, the Panel dismissed Respondent Cromwell's motion, proceeded forward without Respondent Cromwell's further telephonic participation pursuant to Rule 10318 of the NASD Code of Arbitration Procedure (the "Code"), and did not accept in evidence Respondent Cromwell's exhibits.

On December 18, 2001, Respondent Smookler filed his motion to appear telephonically at the evidentiary hearing. At the commencement of the evidentiary hearing, the Panel heard oral arguments by the parties. The Panel afforded Respondent Smookler an opportunity to participate telephonically during the presentation of Claimant's case-in-chief on December 19, 2001 with the understanding that Respondent Smookler would appear in-person to present its case-in-chief on December 20, 2001. Respondent Smookler advised that he would not participate in-person on December 20, 2001. Therefore, the Panel dismissed Respondent Smookler's motion and proceeded forward without Respondent Smookler's further telephonic participation pursuant to Rule 10318 of the Code.

On December 18, 2001, Respondent Cromwell filed its Motion to Dismiss Statement of Claim. At the evidentiary hearing, the Panel denied Respondent Cromwell's motion.

On December 18, 2001, Respondent Smookler filed its Motion to Dismiss Statement of Claim. At the evidentiary hearing, the Panel denied Respondent Smookler's motion.

Claimant at the evidentiary hearing agreed that the Award may be executed in counterpart copies, or that a handwritten, signed Award may be entered.

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:

1. Respondents Cromwell and Smookler are liable, jointly and severally, and shall pay to Claimant compensatory damages in the amount of \$64,000.00. Interest shall accrue on said sum from thirty days after the date of decision until the date the Award is paid in full, at the rate of 6% per annum.

2. Respondents Cromwell and Smookler are liable, jointly and severally, and shall pay to Claimant attorneys' fees in the amount of \$20,000.00. Attorneys' fees are awarded pursuant to the North Carolina Securities Act.
3. Respondents Cromwell and Smookler are liable, jointly and severally, and shall pay to Claimant \$300.00 which represents reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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. 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:

On September 17, 2001, Respondent Cromwell filed its motion to adjourn the evidentiary hearing scheduled for September 25 and 26, 2001. Due to the extenuating circumstances of September 11, 2001 and its impact upon Respondent Cromwell, NASD Dispute Resolution administratively adjourned the evidentiary hearing and waived the adjournment fee of \$1,125.00.

On December 18, 2001, Respondent Cromwell filed its motion to adjourn the evidentiary hearing scheduled for December 19 and 20, 2001. On December 18, 2001, the Panel denied Respondent Cromwell's motion.

On December 18, 2001, Respondent Smookler filed his motion to adjourn the evidentiary hearing scheduled for December 19 and 20, 2001. On December 19, 2001, the Panel denied Respondent Smookler's motion.

Forum Fees and Assessments

The Panel has the authority to assess forum fees for each hearing session conducted. A hearing 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:

| | |
|--|--------------|
| Two (2) Pre-hearing sessions with Panel x \$1,125.00 | = \$2,250.00 |
| Pre-hearing conferences: May 29, 2001 1 session | |
| November 26, 2001 1 session | |

| | |
|--|--------------|
| Two (2) Hearing sessions x \$1,125.00 | = \$2,250.00 |
| Hearing Date: December 19, 2001 2 sessions | |

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| Total Forum Fees | = \$4,500.00 |
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The Panel has assessed the total forum fees of \$4,500.00 jointly and severally to Respondents.

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.

There were no administrative costs incurred during these proceedings.

FEE SUMMARY

Claimant be and hereby is solely liable for:

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|--------------------|------------|
| Initial Filing Fee | = \$300.00 |
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|------------|------------|
| Total Fees | = \$300.00 |
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| | |
|---------------|------------|
| Less payments | = \$300.00 |
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|---|----------|
| Balance Due NASD Dispute Resolution, Inc. | = \$0.00 |
|---|----------|

Respondent Cromwell be and hereby is solely liable for:

| | |
|-------------|--------------|
| Member Fees | = \$4,600.00 |
|-------------|--------------|

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|------------|--------------|
| Total Fees | = \$4,600.00 |
|------------|--------------|

| | |
|---------------|--------------|
| Less payments | = \$4,600.00 |
|---------------|--------------|

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

Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$4,500.00

Total Fees = \$4,500.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution, Inc. = \$4,500.00

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

ARBITRATION PANEL

| | | |
|-------------------|---|------------------------------------|
| Helen E. Clawson | - | Public Arbitrator, Presiding Chair |
| Donald G. Kennedy | - | Public Arbitrator |
| M. Bruce Adelberg | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

/s/
Helen E. Clawson
Public Arbitrator, Presiding Chair

Signature Date

/s/
Donald G. Kennedy
Public Arbitrator

Signature Date

/s/
M. Bruce Adelberg
Non-Public Arbitrator

Signature Date

January 17, 2002
Date of Service

Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$4,500.00

Total Fees = \$4,500.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution, Inc. = \$4,500.00

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

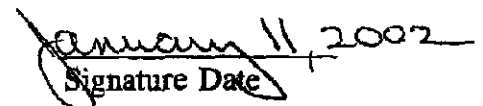
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| Donald G. Kennedy | - | Public Arbitrator |
| M. Bruce Adelberg | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures



Helen E. Clawson
Public Arbitrator, Presiding Chair


Signature Date

Donald G. Kennedy
Public Arbitrator

Signature Date

M. Bruce Adelberg
Non-Public Arbitrator

Signature Date

Date of Service

Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$4,500.00

Total Fees = \$4,500.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution, Inc. = \$4,500.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10390(g) of the Code.

ARBITRATION PANEL

| | | |
|-------------------|---|------------------------------------|
| Helen E. Clawson | - | Public Arbitrator, Presiding Chair |
| Donald G. Kennedy | - | Public Arbitrator |
| M. Bruce Adelberg | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Helen E. Clawson
Public Arbitrator, Presiding Chair

Signature Date

Donald G. Kennedy
Donald G. Kennedy
Public Arbitrator

Jan. 8, 2002
Signature Date

M. Bruce Adelberg
Non-Public Arbitrator

Signature Date

Date of Service

Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$4,500.00

Total Fees = \$4,500.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution, Inc. = \$4,500.00

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

ARBITRATION PANEL

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| Donald G. Kennedy | - | Public Arbitrator |
| M. Bruce Adelberg | - | Non-Public Arbitrator |

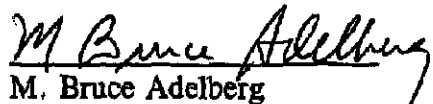
Concurring Arbitrators' Signatures

Helen E. Clawson
Public Arbitrator, Presiding Chair

Signature Date

Donald G. Kennedy
Public Arbitrator

Signature Date


M. Bruce Adelberg
Non-Public Arbitrator

1/10/02
Signature Date

Date of Service