

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
<u>Name of Claimant(s)</u>)	
Marilyn, Barry and Seth Fellman)	
)	Case No. 88-01835
<u>Name of Respondent(s)</u>)	
Philips, Appel & Walden Inc.)	
Hershel Krasnow)	

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.
George R. Canty, Jr.
Leslie Bishop

CASE SUMMARY

This claim was filed with the National Association of Securities Dealers, Inc. (NASD) on June 6, 1988. The hearing was conducted in Fort Lauderdale, Florida on August 27 and November 30, 1990, with a total of four (4) sessions.

Claimants, Barry, Marilyn, and Seth Fellman ("the Fellmans"), alleged that Respondents, Phillips, Appel & Walden, Inc. ("Phillips") and Hershel Krasnow ("Krasnow"), were liable for: an unauthorized transaction relating the sale of certain warrants in June, 1987; and violation of Section 517.12 of the Florida Statutes, since Mr. Krasnow was not registered to sell securities in the State of Florida in February, 1987 when certain units were sold to the Claimants.

Respondent, Krasnow, alleged that: the sale was authorized; and he was not involved in the February, 1987 sale of units. Respondent, Krasnow, asserted the affirmative defenses of Statute of Limitations; failure to exercise due diligence; ratification and waiver; and estoppel.

Respondent, Phillips, failed to file an answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimants requested damages in the amount of \$56,000 plus interest, attorney's fees, and/or rescission of the Claim.

Respondent, Krasnow, requested dismissal of the Claim costs, and attorney's fees. Respondent, Phillips, failed to file an Answer.

AWARD

On August 27 and November 30, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on May 31, 1988, and not signed by Respondents, Krasnow or Phillips, as required pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"), Respondent, Phillips, Appel & Walden, Inc., being an NASD member firm and Respondent, Krasnow, being an person associated with an NASD member firm, Phillips, Appel and Walden, Inc., at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing, and Respondent, Phillips, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding its knowledge of this arbitration as evidenced in the record of proceedings, this arbitration panel has determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimants and Respondent, Krasnow, have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, these parties have agreed to receive conformed copies of the Award while the originals remain on file with the National Association Securities Dealers, Inc. (NASD).
2. Respondents, Phillips and Krasnow, are found liable, jointly and severally, and shall pay to the Claimants the amount of Thirty Six Thousand Three Hundred Twenty Nine and 07/100 (\$36,329.07) Dollars, plus interest at the (legal) rate of 12% per annum (from June 1, 1987 to November 27, 1990), in the amount of Fifteen Thousand Two Hundred Thirty Six and 41/100 (\$15,236.41) Dollars, for a total due to the Claimants of Fifty One Thousand Five Hundred Sixty Five and 48/100 (\$51,565.48) Dollars.
3. Claimants' request for attorney's fees is denied.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of One Thousand Six Hundred and 00/100 (\$1,600.00) Dollars (four sessions x \$400.00 per session). Respondents Phillips and Krasnow, are hereby assessed One Thousand Six Hundred (\$1,600.00) Dollars, jointly and severally, Four Hundred and 00/100 (\$400.00) Dollars, of which shall be paid directly to the Claimants, as a return of their filing fee and One Thousand Two Hundred and 00/100 (\$1,200.00) Dollars, of which shall be paid to the National Association of Securities Dealers, Inc. (NASD).

5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding (including attorney's fees).

OTHER ISSUES

1. Jurisdiction exists pursuant to Section 12 of the Code.
2. For the reasons set forth in the record of Proceedings and contained in Arbitrator's Exhibit Number Two (2), this panel finds service upon, and adequate Notice to, Respondent, Phillips. The NASD, Inc. has made every attempt to locate and serve Respondent Phillips with Notice of this hearing as demonstrated by the evidence contained Arbitrator's Exhibit Number Two (2).

ARBITRATORS CONCURRING

/s/
Casey W. Mills, Esq.

/s/
George R. Canty, Jr.

/s/
Leslie Bishop

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Dated: December 11, 1990