

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

McDonnell Douglas Capital Corporation

88-03793

Name of Respondent(s)

Southmark Financial Services, Inc.

1991

CHICAGO

CASE SUMMARY

In a Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about December 9, 1988, Claimant McDonnell Douglas Capital Corporation ("McDonnell Douglas") alleged that Respondent Southmark Financial Services, Inc. ("Southmark") received commissions for sales of certain securities issued by McDonnell Douglas and for which the investors failed to complete their purchase contracts. McDonnell Douglas alleged that Southmark was a dealer in the selling group for two trust programs named MCLL Equipment First 1987-I and MDLL Equipement Fund 1987-II. McDonnell Douglas alleged that Southmark sold units to two investors in Fund I and one in Trust II. Each investor executed promissory notes on which they allegedly defaulted. Accordingly, McDonnell Douglas alleged that Southmark wrongfully retained the full commissions on the investments since the investors had failed to pay the full price for these investments.

In a Statement of answer filed with the NASD on or about February 8, 1989, Southmark alleged that there was never any contractual provision to refund commissions for those investments on which the investors failed to complete. Southmark also alleged that it had complied with all contractual provisions and that the claim was meritless. Southmark sought an award of sanctions and costs because the claim was baseless.

McDonnell Douglas requested dismissal of the counterclaim.

RELIEF REQUESTED

McDonnell Douglas requested damages of \$82,609.66, plus costs of \$500.00. Southmark requested dismissal of the claim plus an award of sanctions and costs of not less than \$1000.00. McDonnell Douglas asked for dismissal of the counter-claim.

PROCEDURAL MATTERS

At the hearing, one of the arbitrators recused himself from the panel due to the fact that he served on a hospital board of directors with the expert witness for McDonnell Douglas. The parties agreed to proceed with two arbitrators as was their prerogative pursuant to section 24 of the NASD Code of Arbitration Procedure.

AWARD

On December 3, 1990 in Southfield, Michigan during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 2, 1988 by John E. Joseph on behalf of Claimant McDonnell Douglas Capital Corporation and on February 7, 1989 by George J. Vaerewyck on behalf of Respondent Southmark Financial Services, Inc.

The parties 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, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

The remaining two members of arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, have unanimously decided in full and final resolution of the issues submitted for determination as follows:

1. Southmark is liable for and shall pay to McDonnell Douglas, inclusive of interest, the sum of Twenty Two Thousand Dollars and no cents \$22,000;
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant McDonnell Douglas. Southmark is assessed additional forum fees in the amount of \$500.00.

Panel Members Concurring

Dated: 2/25/91

/s/ Robert J. Scafuri
Robert J. Scafuri, Esq.
Presiding Arbitration

Dated: _____

/s/ _____
Peter S. Viviano

Dated Served: _____

88-5743

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant McDonnell Douglas. Southmark is assessed additional forum fees in the amount of \$500.00.

Panel Members Concurring

Dated: _____

/S/

Robert J. Scafuri, Esq.
Presiding Arbitration

Dated: 20 - Feb - 91

/S/

Peter S. Viviano
Peter S. Viviano

Dated Served: _____