

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	)	
Robert E. and Tommie P. LaBonte	)	
Claimants	)	
vs.	)	Amended Award
H.T. Bir, Jack Morley,	)	
and Robert Ryan	)	
Respondents	)	CASE NO. 89-00032

CASE SUMMARY

This Amended Award is issued pursuant to Sections 1284 and 1286.6 of the California Code of Civil Procedure upon the motion of respondent H.T. Birr. The arbitration hearing in this matter was convened on July 31, 1990 and the Award was served on the parties on September 13, 1990. By letter dated October 10, 1990, respondent Birr advised the NASD that he contested the Award on the grounds that he was never properly served with the Statement of Claim. Respondent Birr further claimed that he first learned of the present matter when one of the co-respondents notified him after the Award had been served, and informed him that damages were awarded for which he was jointly and severally liable. Finally, Birr maintained that he had no involvement in the controversy and requested that he be dismissed.

A copy of the letter submitted by respondent Birr was sent to the other parties to afford them an opportunity to file a response. Claimants' filed a response dated November 12, 1990 in which they claim Birr had notice of the controversy by virtue of the Bankruptcy Stay filed in the present matter by Birr, Wilson & Co., Inc. which was originally named as a respondent. Respondents Jack Morley and Robert Ryan filed separate responses dated November 8, 1990, and maintained that Birr was the Chairman of the Board and CEO of Birr, Wilson & Co., and was responsible for the due diligence research for all the tax shelters and limited partnerships at the time, thus leading to the firm's recommendation of investment at issue in this arbitration.

The correspondence from the parties was forwarded to the arbitrators on November 15, 1990 and they reconvened via telephone conference call on November 20th to consider Birr's request. The arbitrators determined that Birr's request is to be treated as a motion to set aside the Award as it relates to him individually, and a motion to dismiss him as a respondent.

AMENDED AWARD

The Arbitrators, having considered the motions and objections before them, have ruled in full and final resolution of the issues submitted for determination as follows:

1. There being no evidence in the record maintained by the NASD of service of process of the original Statement of Claim on respondent H.T. Birr, he is hereby dismissed without prejudice to the claimants' rights to arbitrate this controversy against him individually. The policy of the law, and of arbitration, is to try every case on its merits and both parties are entitled to their day in court.

2. Based upon the foregoing, the assessment of liability of damages and of forum fees in the Award rendered on September 13, 1990 shall be joint and several as to respondents Jack Morley and Robert Ryan; H.T. Birr is dismissed; and the Award remains in full effect.

3. It is further determined that the applicable statutes of limitation with regard to claimants' claims against Birr are tolled for that period when the claim was filed with the NASD, January 6, 1989, to the date of service of this Amended Award.

4. This Amended Award will hereafter be attached to the Award served on September 13, 1990.

IT IS SO ORDERED;

AWARD SERVED: 1/7/91

  
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David H. Brazil

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Respondents Jack Morley on September 6, 1989, and Robert Ryan on June 23, 1989. H.T. Bir did not file a Submission Agreement but is subject to the jurisdiction of this forum under Section 1 of the Code of Arbitration procedure. The hearing was conducted in San Francisco, California and lasted two sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Claimants are hereby awarded the sum of Ten Thousand Dollars and Zero Cents (\$10,000.00) assessed jointly and severally against Respondents H.T. Bir, Jack Morley and Robert Ryan.
2. All other claims are dismissed.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure:
  - a) The NASD shall retain the \$500.00 filing fee previously deposited by the Claimant; and
  - b) Respondents Bir, Morley, and Ryan are jointly and severally assessed the sum of \$500.00 representing forum fees to be paid to the NASD directly.

#### OTHER ISSUES

All claims asserted by Claimants were dismissed by the arbitrators at the opening of the hearing against Joe Arsenio II, Robert H. Wotherspoon, and Bo Lycke on the grounds that Claimants failed to state a cause of action against each or any of them. In addition, all claims were dismissed without prejudice against Ed Brand as a result of lack of personal jurisdiction due to an inability to effectuate personal service over him. Finally, the present action was stayed against Birr Wilson & Co., pursuant to 11 U.S.C. Section 362(a) upon its filing for Chapter 7 Bankruptcy relief.

#### ARBITRATORS CONCURRING

DATE SERVED: 09/13/90

  
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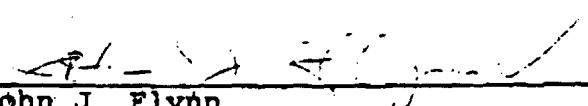
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