

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter Of  
The Arbitration Between and Among

Dennis T. Caron,

Case No. 89-00352

Claimant,

vs.

Equitable Securities of New York, Inc.,  
Glenn Swope, Bill Pearce, and  
Steve Kochensparger,

Respondents.

AWARD

Case Summary

Claimant Dennis T. Caron ("Claimant") alleged that Respondents Equitable Securities of New York, Inc. ("Equitable"), Glenn Swope ("Swope"), Bill Pearce ("Pearce") and Steve Kochensparger ("Kochensparger") engaged in actionable conduct relating to his purchase of stock and warrants in First AmeriCable Corporation.

Claimant alleged that the stock (FATV) and warrants (FATVW) were not suitable investments for him; that there was a failure to disclose all material terms of the warrants; that there was a failure to exercise due diligence prior to rendering advice to Claimant regarding First AmeriCable Corporation; and that there was a failure to sell the FATV stock as instructed.

Equitable denied all of Claimant's allegations and maintained that if it was found liable then it is entitled to judgment against Swope and Pearce. Respondent Swope denied the claims and

asserted that Claimant failed to mitigate his damages. Respondent Pearce denied the claims. Respondent Kochensparger did not file an answer.

#### Relief Requested

Claimant requested damages in the amount of \$11,882 less certain offsets for a net amount of \$8,312. In addition, Respondent Swope served a motion on November 27, 1990 seeking his dismissal from these proceedings based upon his claim that the NASD lacked jurisdiction over him.

#### Award

On November 27, 1990 the undersigned Arbitrator heard the complete controversy between the parties as set forth in Submissions to Arbitration signed by the Claimant on May 1, 1989, Respondent Equitable on January 30, 1990, Respondent Swope on September 5, 1989 and Respondent Pearce on September 1, 1989. Respondent Kochensparger did not execute a Submission Agreement; however, he was served with Claimant's claim by certified mail on August 14, 1989. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the Arbitrator exercised his jurisdiction over Kochensparger.

The hearing was held in Columbus, Ohio and consisted of one full day session. The Arbitrator, 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) The motion of Respondent Swope to dismiss for lack of jurisdiction is DENIED. The Arbitrator finds that Respondent Swope was employed by a member firm at the time of the events in question and that Mr. Swope freely, willingly and voluntarily executed a Submission Agreement on or about September 5, 1989.

2) The claims against Respondents Pearce and Kochensparger are unsupported by the evidence and accordingly are DISMISSED.

3) The claims against Respondents Equitable and Swope regarding suitability, negligent advice and recommendations and failure to sell securities are without merit and are DISMISSED.

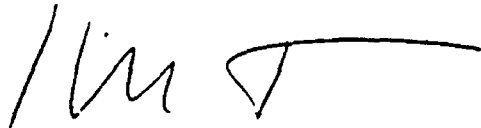
4) The claims against Respondents Equitable and Swope regarding the non-disclosure of pertinent and material information in connection with the purchase of FATVW warrants have been proven by a preponderance of the evidence. Furthermore, based upon the totality of the evidence the Arbitrator finds that Claimant was in a position to have taken actions to mitigate any claimed losses attributable to the inadequate disclosure by no later than December 31, 1988. See Galigher v. Jones, 129 U.S. 193 (1889). Rather than affirmatively acting to mitigate his losses, Claimant made a conscious and deliberate investment decision to retain the FATVW securities, convert them to stock and assume the risk of future adverse market movements. By December, 1988 Claimant had suffered approximately \$1,700 in losses attributable to the deficient disclosures in connection with the purchase of the FATVW securities. Any subsequent losses (or potential gains) are his responsibility.

5) The parties shall bear their respective costs, including attorneys' fees.

6) Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD shall retain the \$200 filing fee previously deposited by Claimant.

7) Forum fees in the amount of \$400 are assessed equally between Claimant and Respondents Equitable and Swope in accordance with Section 43 of the Code of Arbitration Procedure.

8) Claimant shall be credited with his \$200 filing fee and the remaining forum fees of \$200, plus the award of \$1,700 shall be a joint and several obligation of Respondents Equitable and Swope.



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Kevin R. McDermott, Arbitrator

Dated: Columbus, Ohio  
November 28, 1990