

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between	)	
HOMER F. PITTMAN	)	
	)	Claimant
v.	)	
DARYL FARIS	)	
	)	Respondent

NASD NO. 89-01974

CASE SUMMARY

Homer Pittman ("Claimant") alleges that Daryl Faris ("Respondent") did not execute a sell order upon Claimant telephoning the Respondent on August 31, 1987. The sell order was for Pathfinder Treasury and Growth Stock series one and series four. Claimant held 50,000 units of Series four and 10,000 units of series one. On September 2, 1987, Claimant alleges that upon calling the Respondent's office, the office girl checked the records to determine if the series 1 and 4 had been sold. After checking and finding no indication of the sale being effected, the office girl, Pam, asked Claimant if he wished to sell it at that time. Claimant alleges that he said "no, I had told him to sell them on Monday, August 31st." Claimant's units were not sold until October 26, 1987.

Respondent generally denies each and every allegation set forth in the Statement of Claim. Respondent alleges that a limit price was set for the instant shares on the telephone conversation which occurred on August 31, 1987. The unit price was not met. Consequently, Respondent did not sell the units. In the telephone conversation which occurred on September 2, 1987, Respondent alleges that Claimant declined to sell the units on that date. Claimant then went on an extended vacation and was not in contact with Respondent until October 26, 1987.

Affirmatively, Respondent states that the Statement of Claim fails to state a cause of action upon which relief can be granted. Further, the Statement of Claim fails to state any alleged damages incurred by the Claimant. Respondent alleges that Claimant is estopped and barred by the doctrines of ratification and affirmance of the conduct alleged, barred by Claimant's assumption and acceptance of the risk of loss. Further, Claimant failed to mitigate his damages.

Date Served: April 18, 1990

Furthermore, Respondent alleges that Claimant waived his right to maintain this action against Respondents, and was suitable for the transactions given the financial circumstances, background, experience and objectives of the Claimant.

#### RELIEF REQUESTED

Claimant requests damages in the amount of \$11,755.60, plus interest at 8% from September 1, 1987 to the sale date of both series.

Respondent requests that the Statement of Claim be dismissed and that costs of this proceeding be assessed against the Claimant.

#### AWARD

On April 5, 1990 in Dallas, Texas, in a hearing lasting 2 sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on July 7, 1989 by Claimant Homer F. Pittman. No submission agreement was signed by Respondent. However, Respondent Daryl Faris is a registered representative of an NASD member, and therefore, in light of the NASD rules, submits to the NASD arbitration procedure.

The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Daryl Faris is liable for and shall pay to Homer F. Pittman damages in the amount of \$1,539.00 (One Thousand Five Hundred Thirty-nine Dollars and No Cents);
2. Daryl Faris shall pay to Homer F. Pittman the sum of \$400.00 which represents the filing fee and costs of this matter;
3. The request for interest by Homer F. Pittman is denied;
4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant.

#### PRESIDING ARBITRATOR

Dated: April 5, 1990

S/Robert A. Soloman, Esq.