

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Tommie L. Page

90-00478

Name of Respondent(s)

Westport Financial Group
Jerry Stein
Robert M. Fehrman

CASE SUMMARY

In a statement of claim filed with the NASD on or about February 14, 1990, Claimant Tommie L. Page ("Page") alleged that he agreed to purchase 1000 shares of Southland Communication common stock at 10 1/4 per share and 15,000 shares of Strip Tints Treasury Bonds at 0.19722 per share on August 15, 1989. Page alleged that the Southland Communication stock was purchased at a higher price than he originally agreed upon. Page alleged that Respondent Jerry Stein ("Stein") contacted him by telephone and informed Page that Southland Communications was selling for 10 1/4 per share. Page alleged that he told Stein he did not have any funds available to make the purchase because all his money was tied up in mutual funds. Page alleged that Stein told him he could purchase half of the stock with cash and the other half on margin and use the left over monies to purchase the Strip Tint Treasury Bonds if Page liquidated his Putnam Income Government Trust Fund shares. Page alleged that he followed Stein's instructions and mailed his Putnam Fund certificate to Respondent Westport Financial Group ("Westport") on August 19, 1989. Thereafter, Page alleged that he executed a power of attorney authorizing the liquidation of his Putnam Fund.

Respondent Robert M. Fehrman ("Fehrman") and Westport filed a joint answer with the NASD on or about March 23, 1990. Fehrman alleged that the stock certificate for Technigen had been forwarded to Page. Fehrman also alleged that Page would not authorize the sale of the Southland Communications stock and therefore it could not be sold.

Stein did not file a written answer to the claim.

RELIEF REQUESTED

Page requested a refund of \$6,572, his certificate for 500 shares of Technigen Platinum stock and a written explanation for the liquidation of reason that an additional 181.75 shares of his Putnam Fund. Additionally, Page sought the alleged \$2,082.50 profit which should have been credited to him for the purchase of 1000 shares of Southland Communication at 10 1/4 and subsequent sale of these shares at 12 3/4.

PROCEDURAL ISSUES

The NASD Arbitration Department was advised on or about July 13, 1990 that Respondent Westport Financial Group, Inc. was placed in involuntary bankruptcy on or about June 15, 1990. In accordance with the provisions of the bankruptcy code, all litigation commenced against the debtor, Westport Financial Group, Inc. was stayed and Westport Financial Group, Inc. was dismissed for this arbitration without prejudice.

OTHER ISSUES

During opening statements, Page orally amended his statement of claim, without objection from Respondents Stein or Fehrman, to request an award of \$5,000 in punitive damages for mental stress. Page also asked for a return of his arbitration filing fee of \$200.00 and lost wages of \$400.00 for compensation to attend the hearing on October 3, 1990. The arbitrator acknowledged these oral amendments to the claim and ruled that he would dispose of these issues when the award was rendered in this matter.

During his testimony, Page acknowledged that he did receive the stock certificate indicating his ownership of 500 shares of Technigen from Westport Financial after the complaint for arbitration was filed with the NASD.

AWARD

On Wednesday, October 3, 1990 in St. Louis, Missouri during a hearing lasting a total of one session, the undersigned arbitrator heard the controversy between the parties as set forth in submission to arbitration signed on February 9, 1990 by Claimant Tommie L. Page, on March 15, 1990 by Robert M. Fehrman on behalf of Respondent Westport Financial Group, Inc. and on March 19, 1990 by Respondent Robert M. Fehrman. Respondent Jerry Stein did not execute a submission to arbitration or file an answer to the claim. Stein did appear at the hearing and testify. Additionally, at the time of the transactions complained of, Stein was registered as an associated person of an NASD member firm and is obligated to arbitrate this dispute at the insistence of a public customer pursuant to Section 12 of the NASD Code of Arbitration Procedure.

The undersigned 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. I make no disposition of Page's claims asserted against Westport Financial Group, Inc. in view of the involuntary bankruptcy petition filed on June 15, 1990. Page's claims against Westport are, therefore, dismissed without prejudice subject to refiling to depending upon the outcome of the bankruptcy action;

2. All claims asserted by Page against Respondent Fehman shall be and are hereby dismissed in their entirety with prejudice;


3. Respondent Stein is liable for the relief requested in connection with the original transaction involving the Southland Communications. All other claims asserted against Stein are dismissed with prejudice. Page is thereby awarded and shall recover from Stein, compensatory damages in the sum of Two Thousand Three Hundred Seventy One Dollars and Twenty Cents (\$2,371.20);

4. Interest is awarded on the above sum at the rate of 8% from and inclusive of August 14, 1989 to and inclusive of the date the award is paid;

5. The claims for punitive damages and for lost compensation for attending the hearing which were oral amendments to Page's claim are allowed. However, these claims shall be and are hereby dismissed in their entirety with prejudice;

6. 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 \$200.00 previously deposited with the NASD by the Claimant Tommie Page. Respondent Stein shall directly reimburse Page for this \$200.00 forum fee.

Dated: October 22, 1990


Robert J. Gryzmala, Esq.
Presiding Chair