

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimant:

Robert D. Barnes

90-01202

Name of Respondents:

Securities Settlement Corporation
Equities International
Network 1 Financial Securities, Inc.
Mark Cuthbert

REPRESENTATION

For Claimant: Donald McGrath, Esq. of Falk & Siemer.

For Respondent Securities Settlement Corporation: John Marsh, Esq. of Mayer, Brown & Platt.

For Respondent Equities International: No attorney of record.

For Respondent Network 1 Financial Securities, Inc. ("Network 1"): Richard D. O'Reilly, Principal, Network 1.

For Respondent Mark Cuthbert: No attorney of record.

CASE INFORMATION

Claimant filed a Statement of Claim on April 27, 1990 and executed a Submission Agreement on March 28, 1990.

Respondent Securities Settlement Corporation filed a Statement of Answer and Cross Claim against Equities International on June 12, 1990 and executed a Submission Agreement on June 12, 1990.

Respondent Network 1 filed a Statement of Answer and Motion to Dismiss on May 9, 1990 and executed a Submission Agreement on November 20, 1991. .

Respondent Cuthbert did not file a Statement of Answer nor execute a Submission Agreement as required pursuant to section eight of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference: None.

Hearing Date/Sessions: November 20, 1991 - two sessions.

Hearing Location: Buffalo, New York.

Respondent Cuthbert and Respondent Equities International were not present at the hearing.

CASE SUMMARY

Claimant alleged that on April 26, 1988, he ordered four calls of IC Industries Stock, but that his account was erroneously charged for forty such calls. He also alleged that on April 21, 1988, Respondents made an unauthorized purchase of 50,000 shares of Hybrilronics stock, which was charged to his account. In response to Network 1's Motion to Dismiss, Claimant alleged that Network 1 continued to use the same managerial personnel that had been employed by Equities International, and that it opposed the Motion to Dismiss.

Respondent Securities Settlement maintained that as the clearing firm for Equities International, the Claimant's brokerage firm, it did not provide investment advice to or take or solicit orders from Equities customers. It brought a crossclaim against Equities International pursuant to Section Ten of the Clearing Agreement, alleging that it was to be indemnified for any liability that it might incur in this arbitration proceeding. Respondent Securities Settlement did not file a response to Network 1's Motion to Dismiss.

Respondent Network 1 filed an Answer and Motion to Dismiss, maintaining that when Equities International went out of business in December 1988, it acquired only its accounts, but did not assume any prior liability.

RELIEF REQUESTED

Claimant requested compensatory damages of \$12,000.00, punitive damages in an unspecified amount and costs, including attorney's fees.

Respondent Securities Settlement requested dismissal of the claim and costs to be assessed against the Claimant.

Respondent Network 1 requested dismissal of the claim and costs to be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

The arbitration panel made the following rulings with regard to Respondent Cuthbert:

In accordance with section 25 of the Code of Arbitration Procedure, Respondent Cuthbert was served with the Statement of claim and given an opportunity to respond which he failed to do;

In accordance with section 21 and section 26 of the Code of Arbitration Procedure, Respondent Cuthbert was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;

In accordance with section 29 of the Code of Arbitration Procedure the arbitration panel determined in light of the foregoing information to proceed with Respondent Cuthbert as a party.

The arbitration panel made the following rulings with regard to Respondent Equities International:

In accordance with section 25 of the Code of Arbitration Procedure, Respondent Equities International did not receive the Statement of Claim and therefore did not have an opportunity to respond;

In accordance with section 21 and section 26 of the Code of Arbitration Procedure, Respondent Equities International was not given due notice of the hearing by regular and certified mail and failed to appear at the hearing;

In accordance with section 29 of the Code of Arbitration Procedure, the arbitration panel determined in light of the foregoing information to dismiss Respondent Equities International without prejudice.

At the hearing, Respondent Securities Settlement withdrew its cross claim against Respondent Equities International.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Claimant's claim against Respondent Securities Settlement is dismissed in its entirety;

2. That Respondent Cuthbert is directly liable to Claimant and Respondent Network 1 is derivatively liable for Respondent Cuthbert's actions.
3. That Respondent Cuthbert and Respondent Network 1 are liable jointly and severally and shall pay to the Claimant the sum of \$12,099.29 plus simple interest at the rate of 9% from April 28, 1988 to the date of payment of the award;
4. That the Claimant shall return the 50,000 shares of Hybrilronics stock to Respondent Network 1.
5. That each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$400.00 are assessed. This amount was computed as follows:

$(1 \text{ session} \times \$300.00/\text{session}) + (1 \text{ session} \times \$400.00/\text{session}) - \300.00
hearing session deposit previously paid by Claimant = \$400.00.


The parties are to bear this amount as follows:

Respondent Network 1 is to pay the sum of \$200.00 as forum fees and Respondent Securities Settlement is to pay the sum of \$200.00.

Fees are payable to the National Association of Securities Dealers, Inc.

The NASD will retain the Claimant's \$100.00 nonrefundable claim filing fee.

Concurring Arbitrator's Signature:


Robert J. Lane, Jr., Esq.
Public Arbitrator/Chairperson

Date of Decision: January 23, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this *20th* day of *December*, 1991, before me personally appeared Robert J. Lane, Jr. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Patricia M. Lewandowski

PATRICIA M. LEWANDOWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Jan. 31, 19*92*

2. That Respondent Cuthbert is directly liable to Claimant and Respondent Network 1 is derivatively liable for Respondent Cuthbert's actions.
3. That Respondent Cuthbert and Respondent Network 1 are liable jointly and severally and shall pay to the Claimant the sum of \$12,099.29 plus simple interest at the rate of 9% from April 28, 1988 to the date of payment of the award;
4. That the Claimant shall return the 50,000 shares of Hybrilronics stock to Respondent Network 1.
5. That each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$400.00 are assessed. This amount was computed as follows:

$(1 \text{ session} \times \$300.00/\text{session}) + (1 \text{ session} \times \$400.00/\text{session}) - \300.00
hearing session deposit previously paid by Claimant = \$400.00.


The parties are to bear this amount as follows:

Respondent Network 1 is to pay the sum of \$200.00 as forum fees and Respondent Securities Settlement is to pay the sum of \$200.00.

Fees are payable to the National Association of Securities Dealers, Inc.

The NASD will retain the Claimant's \$100.00 nonrefundable claim filing fee.

Concurring Arbitrator's Signature:



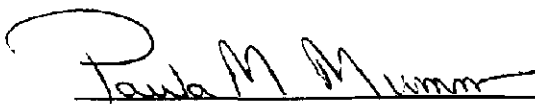
Francis G. Leonard
Industry Arbitrator

Date of Decision: January 23, 1992

STATE OF: New York
COUNTY OF: ~~New York~~ Erie

S.S.:

On this 23rd day of December, 1991, before me personally appeared Francis G. Leonard known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



PAULA M. MUMM
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 12-28 1992

2. That Respondent Cuthbert is directly liable to Claimant and Respondent Network 1 is derivatively liable for Respondent Cuthbert's actions.
3. That Respondent Cuthbert and Respondent Network 1 are liable jointly and severally and shall pay to the Claimant the sum of \$12,099.29 plus simple interest at the rate of 9% from April 28, 1988 to the date of payment of the award;
4. That the Claimant shall return the 50,000 shares of Hybrilronics stock to Respondent Network 1.
5. That each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$400.00 are assessed. This amount was computed as follows:

(1 session x \$300.00/session) + (1 session x \$400.00/session) - \$300.00
hearing session deposit previously paid by Claimant = \$400.00.

The parties are to bear this amount as follows:

Respondent Network 1 is to pay the sum of \$200.00 as forum fees and Respondent Securities Settlement is to pay the sum of \$200.00.

Fees are payable to the National Association of Securities Dealers, Inc.

The NASD will retain the Claimant's \$100.00 nonrefundable claim filing fee.

Concurring Arbitrator's Signature:


James G. Parker
Public Arbitrator

Date of Decision: January 23, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 5th day of January, ¹⁹⁹²1991, before me personally appeared **James G. Parker** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Robin A. Ahearn

ROBIN A. AHEARN
Notary Public, State of New York
Wayne County, #4968263
Commission expires 8/18/92