

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Arthur Wolfe, Shirley Wolfe, Elliot Wolfe,
Kenneth Wolfe and Stanley J. Marks

90-01221

Name of Respondent(s)

Boenning & Scattergood, Inc.
Harold F. Scattergood, Jr.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 30, 1990, Arthur Wolfe, Shirley Wolfe, Elliot Wolfe, Kenneth Wolfe and Stanley Marks (hereinafter collectively "Claimants") alleged that Harold F. Scattergood and Boenning and Scattergood, Inc. (collectively "Respondents") misrepresented material facts in connection with the sale of a certain securities to the Claimants which was relied upon by the Claimants to their detriment. Claimants allege that such misrepresentations were made for the purpose of inducing the Claimants to purchase such security. Claimants also assert that Boenning and Scattergood, Inc. violated its fiduciary duty to Claimants and failed to supervise the activities of Harold F. Scattergood. Claimants state that such conduct violated both Federal and State RICO and securities acts.

In an answer filed with the NASD on or about August 16, 1990, Respondents denied all allegations of wrongdoing asserted by the Claimants and assert that: 1) Claimants' claim for breach of fiduciary duty and breaches of the Federal and State Securities and RICO statutes are barred by the applicable statutes of limitations; 2) Claimants Arthur Wolfe, Shirley Wolfe and Kenneth Wolfe have failed to state a cause of action upon which relief can be granted under State laws; and, 3) Claimants' claims are barred by the doctrine of laches and estoppel.

PROCEDURAL SUMMARY

Respondents, prior to the presentation of evidence, made a motion to dismiss which the panel determined would be presented at the close of Claimants' case-in-chief. At the close of Claimants' case-in-chief, such motion was heard by the arbitration panel and taken under advisement until after the presentation of all evidence in its entirety.

RELIEF REQUESTED

Claimants requested damages in the amount of \$186,687.00 plus treble damages, attorneys fees and punitive damages.

AWARD

On February 27 and 28, 1991 and March 1, 1991 in Scottsdale, Arizona during a hearing lasting seven (7) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed on April 24, 1990 by Claimants Elliot Wolfe and Stanley J. Marks, on April 30, 1990 by Claimants Arthur and Shirley Wolfe and on May 1, 1990 by Claimant Kenneth Wolfe, on July 20, 1990 by Michael B. Bell on behalf of Respondent Boerning and Scattergood, Inc. and on July 20, 1990 by Respondent Harold F. Scattergood, Jr.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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, 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. The Claimants' claim, as asserted, is denied in its entirety;
2. Due to the dismissal of the Claimants' claim on the merits, the Motion to Dismiss and Requests for rulings submitted by the Respondents were deemed moot by the arbitration panel; and
3. 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 \$1000.00 previously deposited with the NASD by the Claimants. Claimants are also assessed forum fees in the amount of Seven Thousand Dollars (\$7,000.00).

Concurring Arbitrators

Dated: _____

John Hansgen

Dated: _____

Harry Hamilton Herts

Dissenting Arbitrator

Dated: 4/22/91



Warren Kotzmann
Presiding Chairman

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Concurring Arbitrators

Dated: _____

John Hansgen

Dated: April 22, 1991

Harry Hamilton Herts
Harry Hamilton Herts

Dissenting Arbitrator

Dated: _____

Warren Kotzmann
Presiding Chairman

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Concurring Arbitrators

Dated: April 26, 1991

John Hansgen
John Hansgen

Dated: _____

Harry Hamilton Herts

Dissenting Arbitrator

Dated: _____

Warren Kotzmann
Presiding Chairman

DATE SERVED - 4-30-91