

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 1000

In the Matter of the Arbitration Between

Name of Claimant

James A. Lanier, Jr.

90-01450

Name of RespondentsWheat First Securities, Inc.  
Leon E. Walker, Jr.REPRESENTATION

For Claimant, James A. Lanier, Jr. ("Lanier"): William R. Shell, a sole practitioner.

For Respondents, Wheat First Securities, Inc. ("WFSI") and Leon E. Walker, Jr. ("Walker"): John M. Ivan, of Wheat First Securities, Inc.

CASE INFORMATION

Statement of Claim filed: May 21, 1990.

Claimant's Submission Agreement signed on: May 21, 1990.

Joint Statement of Answer filed by Respondents on: July 16, 1990.

Respondent, WFSI's Submission Agreement signed on: July 23, 1990.

Respondent, Walker's Submission Agreement signed on: July 23, 1990.

HEARING INFORMATION

Hearing Date(s)/Sessions: May 29, 1991/2 sessions.  
May 30, 1991/2 sessions.

Hearing Location: Greensboro, NC.

CASE SUMMARY

Claimant, alleged that Elgin W. Murphy, Jr. ("Murphy"), a former licensed securities broker whose license had been suspended, acted as an agent of

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Respondent WFSI. Claimant stated Murphy introduced him to Respondent Walker for the purpose of encouraging Lanier to conduct business transactions with Respondents. Claimant averred that on or about February 26, 1986 he opened a margin account at WFSI with Walker as the account executive in charge of the account. Claimant stated he had no previous experience in the stock market, nor did he have knowledge of the risk of various investments and that he could afford to lose only a small amount of money. Claimant asserted Walker and Murphy assured him that if it appeared the account was going into a losing position, it would be closed. Claimant averred that in the fall of 1985, Murphy opened an account at WFSI with Walker as the broker in charge of the account trading in bearer bonds. Claimant stated he did not know to whom the bonds belonged, but at the request of Murphy the account was opened in Claimant's name, though Claimant had no interest in the account. Claimant maintained that at the time of the opening of the account for the trading in bearer bonds, Walker knew Murphy's securities license had been suspended and that Murphy had served time in Federal prison due to various violations involving securities transactions. Claimant asserted the bearer bonds account was seized by the Federal Bureau of Investigation (for reasons unknown to Claimant) and that such seizure occurred prior to the opening of Claimant's account in 1986.

Claimant maintained once he opened the margin account, Walker and Murphy, acting in concert, began to make numerous transactions in Claimant's account in extremely high risk investments, all unbeknownst to Claimant. Claimant stated these transactions involved puts, calls, options and short sales in various volatile and high risk securities. Claimant alleged he met with Walker almost daily and was assured each time the account was doing fine. Claimant averred he did not grow concerned until he was called by Hank Jones, manager of WFSI's office in Wilmington, and asked to sign a statement acknowledging he was invested in a high risk account. Claimant maintained he refused to sign the statement and ordered the account closed and that Walker expressed remorse about his actions and stated he might lose his job as a result of the transactions. Claimant alleged the following claims for relief: breach of fiduciary duty, fraud, breach of contract, negligence and gross negligence, respondent superior, and negligent supervision.

Respondents alleged Walker initially explained the risk of option transactions to Lanier, that Lanier acknowledged in writing he was provided the options disclosure documents, that Hank Jones, wrote Lanier a special letter (at the beginning of the account - prior to substantial losses) that plainly explained the risk of the short term strategies being employed, and that Lanier, later in response to a second letter from Hank Jones, communicated to Respondents in July 1986 that the account was being handled according to his wishes and needs and that he was aware of the risks and costs. Respondents stated the account statements and confirms were sent to Claimant as well as to Murphy. Respondents averred Lanier desired to engage in speculative investment ventures and was made aware by Respondents of the risks and costs involved, that he ratified and authorized all transactions in

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his account, and engaged Murphy to assist and advise him with respect to his account. Respondents averred Claimant himself admitted to WFSI's supervisory efforts in July 1986 while omitting significant previous steps including the disclosure letter written by Hank Jones in June 1986 and that these efforts were far more than any called for by law, regulations or custom and practice for a speculative account for a client such as Lanier.

**RELIEF REQUESTED**

Claimant requested: compensatory and general damages in an amount in excess of \$200,000.00; punitive damages in an amount in excess of \$200,000.00; attorneys' fees; interest; and costs.

Respondents requested: the arbitrators dismiss the claim in its entirety and costs.

**AWARD**

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

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.

- 1- The claim by the Claimant, Lanier, hereby is dismissed in all respects;
- 2- All other claims are dismissed;
- 3- The parties shall each bear their respective costs, including attorneys' fees;

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fee(s) are assessed.

4 sessions X \$750.00 = \$3,000.00.

Forum fees Assessed Against:

- 1- Claimant, in the amount of \$1,500.00, however, Claimant may use the \$550.00 hearing session deposit to offset part of this fee, thereby the

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amount due and owing to the NASD, Inc. equals \$950.00;

2- Respondents, jointly and severally, in the amount of \$1,500.00.

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

Concurring Arbitrators' Signatures

/s/  
Wayne Parker/Public Arbitrator

/s/  
David Brooks Adcock/Industry Arbitrator

/s/  
Larry J. Dagenhart/Public Arbitrator

DATE OF DECISION: July 26, 1991