

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

William Roberson Vestal

Claimant

vs.

90-02018

J.J.B. Hilliard, W.L. Lyons, Inc.

Respondent

REPRESENTATION OF PARTIES

Claimant William Vestal appeared pro se. Respondent J.J.B. Hilliard, W.L. Lyons, Inc. was represented by Kenneth L. Wagner, Esq. of J.J.B. Hilliard, W.L. Lyons, Inc., Louisville, Kentucky.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about July 23, 1990, claimant William Vestal ("Vestal") alleged that; one, Respondent Hilliard Lyons Bank Stock Index possibly violated Sec. 13-6 that "the publicly disseminated information was false and misleading in that this information misrepresented the projected future" of Allied Bankshares, Inc., and United Bancorporation Alaska, Inc., and, two, the Hilliard Lyons Bank Stock Index Ranking of Stock 1 through 200 is misleading in that it implies that a bank with a higher ranking is safer and sounder than one with a lower ranking, three, the Hilliard Lyons Bank Stock Index violates various NASD rules including an anti-fraud provision prohibiting the use of any manipulative, deceptive or other fraudulent device in securities transactions; four, the Hilliard Lyons Bank Stock Index was designed to circumvent securities registration laws and was never registered with the SEC or in the state of Tennessee; five, the Hilliard Lyons Bank Stock Index is in violation of "Blue Sky Laws" in promising that a planned buy and sell method will be used; six, Hilliard Lyons was in conflict of interest as market makers and allowed its customers to take losses on stocks which Hilliard Lyons knew were financially failing. These allegations were made in connection with the purchase of three (3) types of common stock bank stock purchased from Respondent J.J.B. Hilliard, W.L. Lyons, Inc: Allied Bankshares, Inc. purchased in March 1987, Interfirst Corporation purchased in October of 1985 and United Bancorporation Alaska, Inc. purchased in July of 1985 to July of 1986.

In a Statement of Answer filed with the NASD on or about October 15, 1990, respondent J.J.B. Hilliard, W.L. Lyons, Inc. denied the allegations of the claim. As to claim number one (1) above, respondent alleged that as is the case with all stocks recommended for purchase in the Bank Stock Index, the stock is recommended on the basis of financial information then available. As to claim number two (2), respondent alleged that nowhere does the index purport to measure safety or soundness. Rather, it is clear from any information on the index that its sole purpose is to attempt to determine which banks are most undervalued relative to other bank stocks. Respondent also alleged that it was standard practice for brokerage firms to make markets in stocks their analysts follow. This fact does not, as Vestal suggested, result in an actionable conflict of interest claim. Respondent further alleged as to claim number one (1) that as a matter of law a critical element of misrepresentation is reliance by the buyer. As can be seen by the purchases of bank stocks described herein, Vestal did not consistently follow the index in buying bank stocks, and never followed the index's recommendations to sell those stocks that he did own. As to the remaining claims alleged by Vestal, claims three through six, respondent alleged the following: Claim four: Respondent alleged that the index is merely a method for making recommendations. Investors are free to follow or disregard the index's recommendations. As to claims five and six, respondent alleged that Vestal's decision to buy two recommended stocks that subsequently encountered unforeseen problems is regrettable, but the decision to buy those stocks was Vestal's alone.

RELIEF REQUESTED

Claimant William Vestal requested damages of \$25,638.00 which was the amount of 1500 shares of Allied Bankshares at an average cost of \$14.49 and 1500 shares of United Bancorporation Alaska at average cost of \$7.29 less 1500 shares of First Interstate Bancorporation Class A at a current market value of \$1.50 and 150 shares of First Interstate Preferred Series B at a current market value of \$30.50. Respondent J.J.B. Hilliard, W.L. Lyons, Inc. requested that Vestal's claims be dismissed in their entirety.

PROCEDURAL MATTERS

On Tuesday, July 16, 1991 in Nashville, Tennessee during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 26, 1990 by Claimant William Vestal, on October 9, 1990 by Ken Wagner, Esq. on behalf of Respondent J.J.B. Hilliard, W.L. Lyons, Inc.

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 original (s) remain on file with the NASD.

AWARD

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 claims asserted against Respondent shall be and are hereby denied and dismissed in their entirety;
2. The parties shall each bear their own costs and expenses other than those enumerated elsewhere in the award; and

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 claim filing fee and hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant Vestal. Respondent is assessed additional forum fees in the amount of \$400.00 which sum is payable to the NASD.

Panel Members Concurring

Dated:

July 16, 1991

/S/ Thomas A. Harris
Presiding Chair
Public Arbitrator

July 16, 1991

/S/ Martion R. Allen
Public Arbitrator

July 16, 1991

/S/ David W. Wiley, III
Industry Arbitrator

Date Served by NASD: 8-1-91