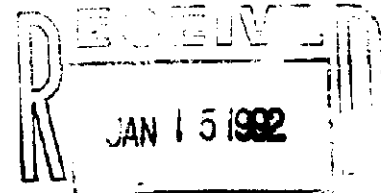


N.A.S.D. AWARD



In the Matter of the Arbitration Between

Name of Claimant

James P. Utley

ARBITRATION-CINC

90-03035

Name of Respondents

Interstate/Johnson Lane and Greg Singletary

REPRESENTATION

For Claimant: Pro se.

For Respondents: Barry P. Harris, IV, Esq. of Interstate/Johnson Lane, Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed: on or about October 29, 1990.

Claimant's Submission Agreement signed on: October 23, 1990.

Joint Statement of Answer filed by Respondents, Interstate/Johnson Lane Corp. and Greg Singletary on: February 19, 1991.

Respondent, Interstate/Johnson Lane Corporation's Submission Agreement signed on: February 14, 1991.

HEARING INFORMATION

Hearing Date/Sessions: October 24, 1991/ two sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant, James P. Utley ("Utley") alleged that Respondent Greg Singletary ("Singletary"), through Respondent Interstate/Johnson Lane ("Interstate") purchased the following investments which Utley alleged to be wholly inappropriate and unsuitable for his present financial situation. In addition to the allegation that the investments were inappropriate, Utley alleged that the investments were also misrepresented to him by Singletary. Singletary made the four following investments: (1) S & P 100 Options, (2) 1000 shares of Western Union Common Stock, (3) 300 shares of Conner Corporation common stock, and (4) two \$5000 units of First Capital Real Estate Limited Partnership.

Respondents denied the allegations set forth in the Statement of Claim and

alleged that Singletary made investments according to Utley's objectives. Singletary alleged that at no time did Utley state that he desired exclusively "low risk investments." Singl Interstate further alleged that Utley stated he wished to make grow. Respondents asserted the following defenses: Claimant was informed of the material aspects of the transactions, Statute of Limitations, Section 15 of the Code of Arbitration Procedure, inappropriate party, estoppel, waiver, failure to mitigate, and contributory negligence.

#### RELIEF REQUESTED

Claimant requested: (1) Refund of the loss incurred for the S & P 100 Options in the amount of \$7,826.00 plus reasonable interest for the period since the loss; (2) in exchange for the shares, refund of the purchase price for the Western Union Common Stock in the amount of \$13,151.38 plus reasonable interest on the purchase price since the purchase; (3) in exchange for the shares, refund of the purchase price of the 300 shares of Conner Corporation Common Stock in the amount of \$5,295.92 plus reasonable interest on the purchase price since the date of the purchase; (4) in exchange for the partnership units, refund of the purchase price of both units of the First Capital Real Estate Limited Partnership in the amount of \$10,000, plus reasonable interest on the purchase price for the time since the purchase. The Claimant also requested attorney's fees.

Respondents requested: that an award be entered in their favor, that all claims by Claimant be dismissed, and that Claimant be required to bear all costs and expenses associated with this proceeding.

#### 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.

Respondents filed a Motion To Dismiss with the NASD. After review of the motion and the response to the motion, the arbitrators decided to defer ruling on the matter until the hearing or after the hearing. After the hearing, the arbitrators rendered the following decision on the Motion to Dismiss: The Respondents Motion to Dismiss is granted with respect to the Claimant's investments in S & P Options on the basis of NASD Rule 15; The Respondent's Motion to Dismiss is granted with respect to the Claimant's investments in First Capital Real Estate Limited Partnership on the basis of the panel's finding that these were custodial investments of the Claimant's two minor sons who have now reached the age of majority and have assumed ownership and control of the assets in their accounts, including any claims or rights that they might have associated with those investments; In all other respects, the Motion to Dismiss is denied.

Respondents filed a Motion To Change the Venue of the Hearing with the NASD. The Director of Arbitration determined that the hearing would be held in Houston, Texas.

AWARD

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

1. With respect to the Claimant's assertion that he is entitled to recovery as a result of his investment in Western Union common stock, Respondents are jointly and severally liable for \$12,907.38, plus interest thereon accruing at the rate of 10% per annum commencing September 9, 1985;

2. With respect to the Claimant's assertion that he is entitled to recovery as a result of his investments in Connor Corporation stock, Respondents are jointly and severally liable for \$5,295.92 plus interest thereon accruing at the rate of 10% per annum commencing January 14, 1986;

3. Respondents are hereby jointly and severally liable for and shall pay to the Claimant attorney's fees in the amount of \$250 under the provisions of the Texas Rules of Civil Practice and Remedies Section 38.001;

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$400 = \$800 minus hearing session deposit of \$400 = net \$400 due.

Forum fees Assessed Against: Respondents jointly and severally. Additionally, Respondents, jointly and severally, shall reimburse to the Claimant \$400 which was the amount previously deposited with the NASD. Respondents, jointly and severally, shall also pay to the NASD \$400 as additional hearing cost for the postponement of the August 22, 1991 hearing date.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

  
Michael E. McGown, Esq.

Public

\_\_\_\_\_  
Martha Failing

Public

\_\_\_\_\_  
Charles V. Dwyer, Jr.

Industry

Date of Decision: \_\_\_\_\_

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Martha Failing

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Industry

Date of Decision: \_\_\_\_\_

90-1035

**NASD**

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Date of Decision: \_\_\_\_\_