

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William R. Leep

NASD Arbitration
No. 91-00515

Name of Respondents

Power Securities
Advent Securities
First American Equities Corp
Vern Wheeler
Jerry Larder
Ray Blitstein
Gary Sylvestri
Neil F. Hornby
Henri R. Hornby
Walter T. Black

REPRESENTATION

For Claimant: James Dietz, Esq. - Medford, Oregon

For Respondent:

Power Securities - Rich Marguase; Las Vegas, Nevada
Advent Securities Inc. - William J. Spight; Denver, Colorado
First American Equities Corp. - William J. Spight; Denver, Colorado
Vern Wheeler - In Pro Se
Jerry Larder - Marc N. Geman, Esq.; Denver, Colorado
Ray Blitstein - In Pro Se
Gary A. Sylvestri - In Pro Se
Neil F. Hornby - In Pro Se
Henri R. Hornby - James T. Wilkerson, J.D.; Campbell, California
Walter T. Black - In Pro Se

CASE INFORMATION

Statement of Claim filed: February 15, 1991

Claimant's Submission Agreement signed on: February 5, 1991

Statement of Answer and Cross-Claim filed by Respondent, Henri R. Hornby on:
March 26, 1992

Motion to Dismiss filed by Respondent, Gary A. Sylvestri, on: September 3, 1991

Motion to Dismiss filed by Respondent, Jerry Larder, on: June 19, 1991

Respondent, Jerry Larder's Submission Agreement signed on: April 24, 1991

HEARING INFORMATION

Pre-Hearing Conference: May 28, 1992 - One Session

Hearing Dates/Sessions: July 24, 1992 - Three Sessions
August 12, 1992 - Two Sessions

Hearing Location: Portland, Oregon

CASE SUMMARY

Claimant, William R. Leep (Leep), in his statement of claim, alleged that he contacted Respondent, Vern Wheeler (Wheeler), who was employed by Respondent, Power Securities (Power), and Wheeler sold to Leep \$1,520.00 worth of stock in Genexus International. Leep also purchased from Wheeler \$2,270.00 in Chromalus Corporation stock and \$16,330.00 in Capital Placement Corporation stock. Leep also alleged that he purchased other unlisted securities through Respondent, Gary Sylvestri (Sylvestri), while Sylvestri was employed by Respondent, Advent Securities (Advent). Leep also purchased securities from Respondent, Ray Blitstein (Blitstein) while Blitstein was employed by Respondent, First American Equities (First American). Respondent, Tom Black, was the "house trader" at Advent who allegedly "slammed the Bid" when Leep attempted to sell his holding through L. F. Thompson where he transferred his account. Leep also purchased shares in Zenith Ventures (Zenith) through Advent which was owned by Respondent, Neil Hornby (N. Hornby). It is alleged that Respondent, Henri Hornby (father of N. Hornby) was the owner of Zenith. Leep alleged that he attempted to liquidate his holdings in Zenith through Sylvestri, but the attempt was unsuccessful. Leep was contacted by Respondent, Jerry Larder (Larder), and he subsequently introduced Leep to Respondent, Blitstein, who it is alleged offered to help Leep sell his Zenith stock. Leep alleged that Blitstein arranged an exchange of his shares in Zenith for shares in Mont Blanc Research and Purecycle. Leep claims that Blitstein assured him that the Mont Blanc shares would soon be listed on the NASDAQ exchange and would therefore be liquid.

Subsequently, Blitstein, who was then employed by Respondent First American, contacted Leep and recommended the sale of Purecycle and the purchase of CECO Filters, Inc. Said transaction occurred, Leep alleged, without his knowledge that First American was a "market maker" in CECO stock. First American was then taken over by CTRA Clearing House which lead to a significant drop in value of the CECO Filter, Inc. share.

Leep alleged that the misrepresentations, actions, and unfulfilled promises of Wheeler, Sylvestri and Blitstein were reasons for losses in excess of \$33,000.00 and a lost real estate investment opportunity of \$60,000.00.

Respondent, Gary A. Sylvestri, generally denied each and every allegation in the claim.

Respondent, Vern Wheeler, generally denied each and every allegation in the claim. At the time of the hearing, Vern Wheeler admitted fault but claimed that other defendants were equally or more at fault.

Respondent, Jerry Lander, generally denied each and every allegation in the claim.

Respondent, Neil F. Hornby, generally denied each and every allegation in the claim.

Respondent, Walter T. Black, generally denied each and every allegation in the claim.

Respondent, Henri R. Hornby, alleged that he was never approached, directly or indirectly, by Wheeler regarding the transactions complained of by Leap and never in any way guaranteed the liquidity or profitability of any stock purchased by Leap or any other person. Hornby also alleged that Leap is an experienced, sophisticated investor who was, or should have been, aware of the risks involved in trading in "pink sheet" stocks.

By way of cross-claim, Hornby alleged that Wheeler and Neil Hornby were in the exclusive position to control the conduct of the employees of Advent and First American and if any conduct complained of by Leap occurred that caused him damage, then cross-respondents are solely liable therefor.

Hornby also alleged that Leap has brought and maintained this action against Hornby without just cause and has done so maliciously for the purpose and with the intent of attempting to leverage a settlement or contribution from the other Respondents in this action, while having no basis on which to assert that Hornby is personally obligated to Leap in any amount for the conduct complained of in his claim.

RELIEF REQUESTED

Claimant requested in excess of \$33,000.00 in stock losses, loss of an opportunity to invest in a real estate transaction that would have grossed approximately \$60,000.00, personal time spent in the value of \$4,000.00, plus costs.

Respondents requested dismissal of the claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

On May 28, 1992, a pre-hearing conference was held to rule on motions and discovery matters. Respondents made a motion to change the situs of the hearing from Portland, Oregon to Denver, Colorado. After reviewing filings and hearing oral arguments, the Chairman of the panel denied the motion. However, the Chair ruled that any party who chose to do so would be permitted to appear by telephone conferencing. The costs of said conferencing shall be billed equally among the parties.

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 National Association of Securities Dealers.

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. Each and every claim of Claimant, William R. Leep, against Respondent, Vern Wheeler, is dismissed.
2. Each and every claim of Claimant, William R. Leep, against Respondent, Jerry Larder, is dismissed.
3. Each and every claim of Claimant, William R. Leep, against Respondent, Ray Blitstein, is dismissed.
4. Each and every claim of Claimant, William R. Leep, against Respondent, Gary Sylvestri, is dismissed.
5. Each and every claim of Claimant, William R. Leep, against Respondent, Neil F. Hornby, is dismissed.
6. Each and every claim of Claimant, William R. Leep, against Respondent, Henri R. Hornby, is dismissed.
7. Each and every claim of Claimant, William R. Leep, against Respondent, Walter T. Black, is dismissed.
8. The panel determined that Respondent, Power Securities, was not properly served with due notice of the hearing and is therefore dismissed from the claim, without prejudice.
9. The panel determined that Respondent, Advent Securities, Inc., was not properly served with due notice of the hearing and is therefore dismissed from the claim, without prejudice.
10. The panel determined that Respondent, First American Equities Corp, was not properly served with due notice of the hearing and is therefore dismissed from the claim, without prejudice.
11. The Cross-Claim of Henri R. Hornby against Vern Wheeler, Neil F. Hornby, Advent Securities, Inc. and First American Equities Corporation is dismissed.
12. The parties shall each bear their respective costs and fees, including attorneys fees.

FORUM FEES

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

1. The total assessable forum fees are \$3,950.00, representing fees for one pre-hearing conference at \$200.00 and five hearing sessions at \$750.00.
 - a. Neil Hornby is assessed the sum of \$987.50, representing one-fourth of the fees assessed.

b. Henri R. Hornby is assessed the sum of \$987.50, representing one-fourth of the fees assessed.

c. Vern Wheeler is assessed the sum of \$987.50, representing one-fourth of the fees assessed.

d. William R. Leep is assessed the sum of \$237.50, representing one-fourth of the fees assessed less, the previously-deposited \$750.00.

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

ARBITRATORS

Name

Public/Industry

Walter Middlecamp

Industry Arbitrator

Gerald D. Wygant, Esq.

Public Arbitrator

Gordon MacMillan

Public Arbitrator

Concurring Arbitrators' Signatures

Walter Middlecamp 9-19-92
Walter Middlecamp

Gerald D. Wygant, Esq.

Gordon MacMillan

Date of Decision: _____

Served Oct. 14, 1992