

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

L. John Lewis

vs.

NASD #91-00533

Name of Respondents

First Eagle, Inc.

Joannie Merwyn

REPRESENTATION

For Claimant: Randall N. Skanchy, Esq., of Jones, Waldo, Holbrook & McDonough, Salt Lake City, Utah.

For Respondent (First Eagle): Barry W. Fortner, Denver, Colorado.

For Respondent (Merwyn): J. Merwyn pro se.

CASE INFORMATION

Statement of Claim filed: February 19, 1991

Claimant's Submission Agreement signed: February 11, 1991

Statement of Answer filed by Respondents on: None filed

Respondents' Submission Agreements signed on: None filed; respondents are subject to the jurisdiction of the National Association of Securities Dealers, Inc. (NASD) in accordance with Sections 1 and 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: June 10, 1992 (two sessions)

Hearing Location: Salt Lake City, Utah

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CASE SUMMARY

CASE SUMMARY

(See attached "Arbitrator's Award.")

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$25,000.00;
2. Interest;
3. Costs; and
4. Punitive damages

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 copy of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator had decided in full and final resolution of the issues submitted for determination as follows:

(See attached "Arbitrator's Award", numbers one through five);

6. The claim for punitive damages is dismissed;
7. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$300 hearing session deposit previously deposited by the claimant, which is assessed against respondents, jointly severally and is to be paid to claimant.

Respondents, jointly and severally for the amount of \$300.00.

calculated as follows: Two hearing sessions x \$300/session equals \$600, minus \$300.00 assessed respondents to be paid directly to claimant.

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

ARBITRATION PANEL

Name

Public/Industry

Parker M. Nielson, Esq.

Public Arbitrator

(See attached "Arbitrator's Award.")

Parker M. Nielson, Esq.

AN ARBITRATION PROCEEDING BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

L. JOHN LEWIS,)	
)	
Claimant,)	NASD No. 91-533
)	
vs.)	
)	
FIRST EAGLE, INC., and JOANNIE)	
MERWYN,)	ARBITRATOR'S AWARD
)	
Respondents.)	

SUMMARY OF ISSUES

The Statement of Claim was filed dated February 11, 1991, alleging that Claimant L. John Lewis opened an account with Respondent First Eagle, Inc. in Salt Lake City Utah, which was transferred to First Eagle's office in Englewood, Colorado, where it was subsequently handled by Respondent Joannie Merwyn. It was alleged that Lewis requested that Merwyn purchase equal positions in Discovery Capital Corp. and Independent Entertainment for an investment of \$24,000.00, to come from funds in the account or to come from \$13,000.00 to be sent by Lewis. Lewis mailed a check to First Eagle in the amount of \$13,000.00 and, in addition, Merwyn contacted Lewis' parents and, without Lewis' authorization, persuaded them to wire a check in the amount of \$12,536.92. It was alleged that in June of 1990 Merwyn purchased 7600 shares of Independent Entertainment at \$19,687.50 and 1300 shares of Discovery Capital Corp. for \$3,915.00 for a total investment of \$23,602.50 and during July Merwyn purchased 4300 shares of

Discovery Capital Corp. at a price of \$12,915.00. It was also alleged that in August and September, 1990, Lewis complained to both Merwyn and First Eagle that the trades were unauthorized and that in November, 1990, First Eagle sold 7500 shares of Independent Entertainment for \$3,674.50, at Lewis' request, to mitigate his losses. Claimant alleges that First Eagle and Merwyn made unauthorized trades in his account, breached their fiduciary duty by purchasing stock contrary to his instructions and breached their express or implied contract with Lewis, and that Lewis has been damaged in an amount in excess of \$25,000.00. Claimant also requests interest, attorneys' fees and costs of arbitration.

Respondents have failed to answer the claim. Claimant moved to bar presentation of any facts or defenses pursuant to Rule 25(b)(2)(ii) and (iii) of NASD procedure, which motion was taken under advisement, subject to rights of the Claimant to renew the motion at the time of hearing and Respondents were directed to furnish Claimant a statement of defenses to the Statement of Claim, and any documentary evidence they proposed to offer in opposition to the claim at least ten (10) days prior to hearing, pursuant to § 32(c), Code of Arbitration Procedure. No statement of a defense or documentary evidence has been filed pursuant to the direction.

DAMAGES AND RELIEF AWARDED

On June 10, 1992, the undersigned arbitrator heard the controversy. Claimant presented evidence and made oral arguments. Respondents did not appear, in person or through counsel, and presented no answer to the claim or any evidence. The undersigned

arbitrator directed Claimant to submit additional evidence concerning the market price of the stock, which was submitted by Claimant on August 5, 1992, and having considered the pleadings, the testimony, the evidence presented at the hearing, and additional evidence, determines the issues submitted for determination as follows:

1. Claimant's motion to bar presentation of evidence by Respondents is granted.

2. Claimant is awarded the sum of \$12,536.92 on the unauthorized trading claim plus interest thereon in the amount of \$3,181.97, against First Eagle, Inc. and Joannie Merwyn, jointly and severally.

3. Claimant is awarded the sum of \$9,654.38 against First Eagle, Inc. and Joannie Merwyn, jointly and severally, on the claims that Respondents failed to follow Lewis' instructions to invest the remaining \$24,110.58 in the account in Discovery Capital and Independent Entertainment in equal amounts.

4. The evidence submitted is insufficient to establish claims of Claimant that Lewis was overcharged on the purchases of Discovery Capital and Independent Entertainment, or that the purchases, other than the \$12,536.92 obtained from Lewis' parents, were unauthorized.

5. Respondents are assessed forum fees to be paid directly to the National Association of Securities Dealers.

DATED this 5th day of November, 1992.

(0640N)


Parker M. Nielson, Arbitrator