

NASD

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Murray Dulberg

91-01220

Name of Respondents

R.H. Damon & Co.
David Davidson

REPRESENTATION

Claimant Murray Dulberg ("Claimant") was represented by Lowell B. Davis, Esq. of the law offices of Sheehy & Friedler.

Respondent R. H. Damon & Co. ("Damon") was represented by Damon Testaverde.

Respondent David Davidson ("Davidson") was represented by Andrew W. Sidman, Esq. of Butler, Fitzgerald & Potter.

CASE INFORMATION

Statement of Claim filed: April 16, 1991.

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

Statement of Answer filed by Respondent, R.H. Damon & Co. on: June 7, 1991.

Respondent, R.H. Damon & Co.'s Submission Agreement signed on: June 7, 1991.

Statement of Answer filed by Respondent, David Davidson on: June 14, 1991.

Respondent, David Davidson's Submission Agreement signed on: June 7, 1991.

HEARING INFORMATION

Hearing Date/Sessions: March 12, 1992, 2 sessions

Hearing Location: NASD, Inc., New York City, New York

CASE SUMMARY

Claimant alleged that Respondent Davidson, an employee of Respondent R.H. Damon & Co., Inc., engaged in the unauthorized purchase and sale of a variety of securities. 1) Claimant alleged Respondent engaged in the unauthorized

purchase of Star Classics, Inc., at 61 cents per share on or about July 27, 1990. Claimant alleged this transaction was paid for by a check in the amount of \$7,000 which was directed to Claimant's money market account. 2) Claimant alleged that Respondent failed to sell 1,100 shares of Mizlou common stock at 8 1/4. 3) Claimant further alleged the unauthorized purchases by Respondent of 6500 warrants of Cable Applications, Inc. broken down as follows: 1,000 on January 2, 1990 for a cost of \$3,005.25; 2,500 on March 13, 1990 for a cost of \$5,161.25; and 3,000 on July 27, 1990 for a cost of \$410.50.

Respondents maintained that the transactions alleged in the Statement of Claim were authorized and were made in accordance with Claimant's instructions. Respondents maintained that on or about July 26, 1990 Claimant told Respondents that he was sending a check for \$7,000.00., he was going out of town, if a good investment opportunity was available the money should be invested, or otherwise be put into his money market account. Respondents maintained that on or about July 27, 1990 Respondent Davidson purchased 10,000 shares of Star Classics, Inc. for Claimant's account. R.H. Damon & Co., Inc. was recommending Star Classics, Inc. and the purchase was discussed with Claimant within several days after it was made and from time to time thereafter. Claimant did not object to the trade or complain about the trade from that time through early January, 1991, when Respondent Davidson left Damon. Respondents maintained Claimant told Respondent Davidson that he wanted to sell Mizlou if the price dropped to 8 1/4. Respondent Davidson informed Claimant it was not possible to place a stop-loss order on over-the-counter stocks like Mizlou, but that he would do the best he could to sell the stock if it dropped to that price. Respondent Davidson contacted Claimant and told him he could sell the stock and receive a net price between 7 and 8. Respondents maintained that Claimant decided not to sell the stock and subsequently the price of the stock dropped and the company went into bankruptcy. Respondents maintained that the January and March purchases of Cable Applications were specifically discussed with Claimant before they were made. Respondent maintained that the July, 1990 purchase was made in accordance with the discussion which took place between Claimant and Respondent Davidson on or about July 26, 1990, discussed above. Respondent Davidson maintained he discussed this purchase with Claimant within several days of the trade.

RELIEF REQUESTED

Claimant requested compensatory damages in the amounts of \$6,100.00 for Star Classics, Inc.; \$8,250.00 for Mizlou common stock; and \$8,577.00 for Cable Applications warrants.

Respondents requested that Claimant's claim be dismissed in its entirety and that Respondents should be awarded the costs, including reasonable attorneys' fees.

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.

AWARD

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

1. That Respondents Damon and Davidson are liable to the Claimant and shall pay to the Claimant the sum of \$3,760.00.
2. That the parties shall bear their respective costs, including attorneys' fees.
3. All other claims are denied in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are equally assessed between the Claimant and Respondents Damon and Davidson.

Claimant is assessed forum fees in the amount of \$300.00; however, Claimant is entitled to offset this amount with his hearing session deposit of \$300.00 so that no monies are due from Claimant.

Respondents are jointly and severally assessed forum fees in the amount of \$300.00.

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

Concurring Arbitrator's Signature:

Name

Public/Industry

Howard L. Mandell

Howard L. Mandell, Esq./Chairman

Public Arbitrator

Date of Decision: May 13th, 1992