

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Ruth Ann Hoppes, Daniel Wampler  
James C. Jackson, Phyllis Jackson,  
and Patricia Mulvaney

and

91-01318

Name of Respondent(s)

Waddell & Reed, Inc.

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REPRESENTATION OF PARTIES

Claimants were represented by Diane A. Nygaard, Esq., Overland Park, KS.

Respondent was represented by W. Perry Brandt, Esq. of Stinson, Mag & Fizzell, Kansas City, MO.

CASE INFORMATION

The Statement of Claim was filed on or about April 25, 1991.  
Amended Statement of Claim filed on or about May 20, 1991.

Claimant Ruth Ann Hoppes's Submission Agreement signed on April 22, 1991.

Claimant Daniel Wampler's Submission Agreement signed on April 29, 1991.

Claimants James C. Jackson and Phyllis Jackson's Submission Agreement signed on April 19, 1991.

Claimant Patricia L. Mulvaney's Submission Agreement signed on April 19, 1991.

Amended Statement of Answer filed by Respondent on or about September 17, 1991 August 21, 1991.

Respondent Waddell & Reed, Inc.'s Submission Agreement signed on July 22, 1991 by Rodney O. McWhinney, Esq.

### HEARING INFORMATION

The hearing was held on Tuesday, April 21, 1992 for two (2) sessions, Wednesday, April 22, 1992 for one (1) session, Thursday, April 23, 1992 for two (2) sessions and Monday, May 4, 1992 for two (2) in Kansas City, Missouri for a total of seven (7) sessions.

### CASE SUMMARY

Claimant alleged that John Duncan, while employed by Waddell & Reed, Inc. ("Respondent") solicited them to purchase products which he said were recommended by Respondent. Some of the Claimants alleged that Duncan told them that International Investments was a product of Respondent. Claimants stated that they learned that Mr. Duncan had "disappeared" with their funds in late 1988. The claimants asserted civil actions against Mr. Duncan, obtained default judgments, and collection efforts have been unsuccessful. Claimants alleged that Respondent is liable to them under the following theories: the doctrine of respondeat superior; apparent authority; negligence; and violations of the NASD rules and regulations, in particular the failure to supervise, and failure to notify customers of Mr. Duncan's termination; and violations of state securities laws.

Respondent denied any responsibility for the actions of Mr. Duncan. Respondent further stated that the claimants had each testified at preliminary hearings for the criminal trial of Mr. Duncan that they did not believe that they were making investments through Waddell & Reed, Inc. Respondent also stated that certain claimants were aware that Mr. Duncan had been terminated from Waddell & Reed. Respondent asserted that the claims were time barred by the applicable statutes of limitations and that it could not be held responsible for the activity of Mr. Duncan when he was acting beyond the scope or course of his authority.

### RELIEF REQUESTED

Claimants requested damages in the following amounts:

Ruth Ann Hoppes	\$150,000.00
Patricia Mulvaney	\$278,085.00
David Wampler	\$22,857.31
James Jackson	\$82,802.16
Phyllis Jackson	\$15,000.00

The Claimants also requested attorney's fees, interest, costs and punitive damages in the amount of \$500,000.00.

Respondent requested that the Statement of Claim be dismissed and that it be awarded its' costs and attorney's fees.

### OTHER ISSUES CONSIDERED & DECIDED

At the commencement of the hearing of this matter, the panel was advised that James Jackson and Phyllis Jackson had withdrawn their claims.

Respondent asserted a Motion to dismiss based upon the Statute of Limitations. The panel considered the arguments presented on behalf of the parties and the briefs submitted by the parties during the break in the proceedings. The panel had taken the motion under advisement until the conclusion of the presentation of evidence.

At the conclusion of the Claimant's case in chief, Respondent asserted a Motion for a Directed Verdict. The panel considered the arguments of the parties and has decided to sustain the motion.

### AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, the Motion for Directed Verdict, and the arguments and briefs submitted by the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Motion for Directed Verdict is sustained. Therefore the claims asserted herein are dismissed.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD on behalf of the Claimants. Claimant Ruth Ann Hoppes shall pay to the NASD the sum of \$1,500.00 (One Thousand Five Hundred Dollars), Claimant Patricia Mulvaney shall pay to the NASD the sum of \$1,500.00 (One Thousand Five Hundred Dollars), and Respondent Waddell & Reed, Inc. shall pay to the NASD the sum of \$3,500.00 (Three Thousand Five Hundred Dollars) as forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees previously deposited with the NASD by the parties, if any.

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

Dated:

May 5, 1992

5/5/92

5/5/92

Julian M. Levitt  
Julian M. Levitt, Esq.  
Presiding Chair  
Public Arbitrator

Alan C. Fite  
Alan C. Fite  
Public Arbitrator

Lonnice L. Cunningham  
Lonnice L. Cunningham  
Industry Arbitrator