

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Leonard Wend

vs.

91-01945

Name of Respondent(s)

McKeever Securities, Inc.

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REPRESENTATION

For Claimant: Leonard Wend, Las Vegas, Nevada

For Respondents: Charles D. Davidson, Esq., Garvey, Schubert & Barer,  
Portland, Oregon

CASE INFORMATION

Statement of Claim filed: June 24, 1991

Claimant's Submission Agreement signed on: June 18, 1991

Statement of Answer filed by Respondent on: August 2, 1991

Respondent's Submission Agreement signed on: August 30, 1991

HEARING INFORMATION

Prehearing Conference Date: None

Hearing Date/Sessions: May 22, 1992 (two sessions)

Hearing Location: Las Vegas, Nevada

CASE SUMMARY

Claimant alleged that he was placed in an unsuitable investment by purchasing on margin the McKeever Total Return Fund ("the Fund"). Claimant

alleged that he was never properly informed of the nature of the investment on margin, that he was not qualified for that type of an investment, and that the Respondent failed and refused to properly communicate with Claimant to answer his questions and concerns.

Respondent asserted that it has not engaged in any wrongful conduct and that all losses incurred by Claimant were the result of market fluctuation in the value of the Fund as a result of a decline in the value of the securities owned by the Fund. Respondent further asserted that the Fund was managed appropriately at all times.

#### RELIEF REQUESTED

Claimant requested:

1. The return of Claimant's initial investment of \$15,000 minus \$3,354.18;
2. The return of two margin calls totalling \$3,251.33;
3. Interest at 6 1/2% on the \$15,000 invested;
4. A refund of all fees paid for the arbitration; and
5. Punitive damages in the amount of \$15,000.

Respondent requested:

1. Dismissal of all claims.

#### 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$6,600, inclusive of interest, and in satisfaction of Claimant's claims.
2. Respondent is liable for and shall pay to Claimant the sum of \$3,100 in punitive damages, pursuant to NRS 42.005; Granite Construction Co. v. Rhyno, 817 P.2d 711, 107 Nev. 651 (1991).
3. Respondent is liable for and shall pay to Claimant the sum of \$500 as reimbursement for Claimant's filing fee and hearing session deposit.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$400 hearing session deposit previously deposited by the Claimant. Forum Fees assessed against:

Respondent in the amount of \$400 calculated as follows:  
Two hearing sessions times \$400/session minus the \$400 to be reimbursed to Claimant.

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

ARBITRATION PANEL

Name

Public/Industry

William Urga, Esq.

Public Arbitrator

Sherwood N. Cook, Esq.

Public Arbitrator

Harvey M. Hudgins

Industry Arbitrator

Concurring Arbitrators' Signature

William Urga, Esq.

Sherwood N. Cook  
Sherwood N. Cook, Esq.

Harvey M. Hudgins

Date of Decision: 7/17/92

Served 7/28/92