

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Anthony C. Hardy

91-02319

Name of Respondents

First Eagle, Inc.
Joseph Jenkins, Jr.
Thomas Peter Sussman
Norman E. Phillips
Barry W. Fortner
Robert C. Valerius
Theodore Giergielewicz
Robert B. Whitmore
Jon J. Vargo

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 30, 1991, Claimant Anthony C. Hardy, who appeared Pro Se, alleged that in April 1990, at the recommendation of his broker, Respondent Joseph Jenkins, Jr., he authorized the transfer of his account from Wellshire Securities, Inc. to Respondent First Eagle, Inc., whereby on April 25, 1990 on Respondent Joseph Jenkins, Jr. recommendation, Claimant purchased Comparator Systems stock and on the recommendation of Respondents Norman E. Phillips and Thomas P. Sussman, Account Executives with Respondent First Eagle, Inc., Claimant purchased Pan World stock. Claimant further alleged that Respondent Joseph Jenkins, Jr. made numerous fraudulent misrepresentations and omissions of material facts about Comparator Systems stock whereby he failed to disclose that Comparator had significant liabilities and little or no cash to meet these obligations. Claimant contended that Respondent Joseph Jenkins, Jr. also made statements regarding Comparator Systems which he knew were false. Claimant further contended that Respondents Thomas P. Sussman and Norman E. Phillips failed to disclose that Pan World was a developmental stage company which had very little capital or resources and produced no revenues or that the shares were thinly traded and involved substantial risk. Claimant asserted that Respondent Barry W. Fortner, President of Respondent First Eagle, Inc.; Respondent

Robert G. Valerius, Chief Compliance Officer; Respondent Jon J. Vargo, acting principal; and Respondents Robert B. Whittmore and Theodore Giergielewicz, branch managers of Respondent First Eagle, Inc.'s New York office, authorized and encouraged such activities by their employees and did not properly supervise the purchase and sale methods of their agents. Claimant alleged that Respondents violated Section 12(2) of the Securities Act of 1933, Section 17(a) and 10(b), in addition to Rule 10b-5 of the Securities Exchange Act of 1934 and multiple North Carolina general statutes, therefore, Respondents are liable for his losses.

Respondent Theodore Giergielewicz, who appeared Pro Se, maintained that he did not remember talking to Claimant Anthony C. Hardy for any reason and was never contacted by Claimant to complain either through written or verbal communication. Respondent Theodore Giergielewicz further maintained that he had no knowledge and did not encourage any illegal activities at the New York office of Respondent First Eagle, Inc.

Respondent First Eagle, Inc. failed to file an Answer to the Statement of Claim.

Respondent Barry W. Fortner failed to file an Answer to the Statement of Claim.

Respondent Thomas P. Sussman failed to file an Answer to the Statement of Claim.

Respondent Norman E. Phillips failed to file an Answer to the Statement of Claim.

Respondent Robert C. Valerius failed to file an Answer to the Statement of Claim.

Respondent Robert B. Whittmore failed to file an Answer to the Statement of Claim.

Respondent Jon J. Vargo failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Anthony C. Hardy requested \$7,000.00 in actual damages plus \$2,750.00 Punitive damages together with attorney's fees and reimbursement of the NASD filing fee.

Respondent Theodore Giergielewicz requested the claim be dismissed.

Respondent First Eagle, Inc. failed to file an Answer to the Statement of Claim.

Respondent Barry W. Fortner failed to file an Answer to the Statement of Claim.

Respondent Thomas P. Sussman failed to file an Answer to the Statement of Claim.

Respondent Norman E. Phillips failed to file an Answer to the Statement of Claim.

Respondent Robert C. Valerius failed to file an Answer to the Statement of Claim.

Respondent Robert B. Whittmore failed to file an Answer to the Statement of Claim.

Respondent Jon J. Vargo failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondents First Eagle, Inc., Barry W. Fortner, Joseph Jenkins, Jr., Thomas P. Sussman, Norman E. Phillips, Robert C. Valerius and Jon J. Vargo were served a copy of the Statement of Claim by regular mail on November 15, 1991 and given an opportunity to respond which they failed to do.

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent Robert B. Whittmore was served a copy of the Statement of Claim by regular mail on December 24, 1991 and given an opportunity to respond, which he failed to do. Respondent Robert B. Whittmore was re-served on April 20, 1992 and once again on December 24, 1992, via certified mail, with a copy of the Statement of Claim and given an opportunity to respond, which he failed to do. The signed certified mail receipts were returned to the NASD dated January 16, 1992 and April 25, 1992, respectively, evidencing his receipt of this correspondence.

Respondents First Eagle, Inc., Norman E. Phillips, Robert C. Valerius and Jon J. Vargo were notified on January 14, 1992, via certified mail that their Statement of Answers were overdue. Respondent First Eagle, Inc. signed certified mail receipt was returned to the NASD, Inc. date stamped January 17, 1992, evidencing their receipt of this correspondence. Respondents Norman E. Phillips, Robert C. Valerius and Jon J. Vargo signed certified mail receipts were returned to the NASD dated January 17, 1992, evidencing their receipt of this correspondence. Respondent Thomas P. Sussman was notified on April 20, 1992, via certified mail, that his Statement of Answer was overdue. Respondent Thomas P. Sussman's signed certified mail receipt was returned to the NASD date stamped April 30, 1992, evidencing his receipt of this correspondence.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondents First Eagle, Inc., Barry W. Fortner, Joseph Jenkins, Jr., Thomas P. Sussman, Norman E. Phillips, Robert C. Valerius, Robert B. Whittmore and Jon J. Vargo were required to submit to this arbitration proceeding and are, therefore, bound by the arbitrator's ruling and determination.

AWARD

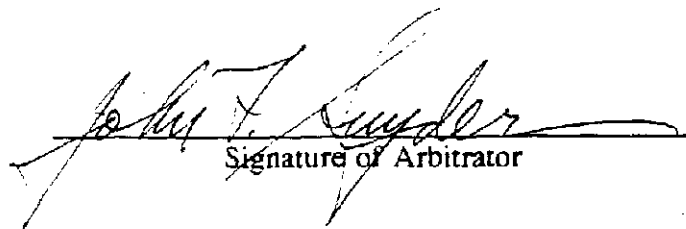
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John F. Snyder, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 30, 1991 and not by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined and full and final resolution of the issues submitted for determination as follows:

1. Respondents First Eagle, Inc., Barry W. Fortner, Joseph Jenkins, Jr., Thomas P. Sussman, Norman E. Phillips, Robert C. Valerius, Theodore Giergielewicz, Robert B. Whittmore and Jon J. Vargo are jointly and severally liable and shall pay to the Claimant Anthony C. Hardy the sum of \$10,000.00 in damages.
2. Respondents First Eagle, Inc., Barry W. Fortner, Joseph Jenkins, Jr., Thomas P. Sussman, Norman E. Phillips, Robert C. Valerius, Theodore Giergielewicz, Robert B. Whittmore and Jon J. Vargo are jointly and severally liable and shall pay to the Claimant Anthony C. Hardy simple interest at the rate of 8% per annum from July 16, 1991 to the date of payment of the award.
3. The Claimant's request for Punitive damages is denied.
4. Respondents First Eagle, Inc., Barry E. Fortner, Joseph Jenkins, Jr., Thomas P. Sussman, Norman E. Phillips, Robert C. Valerius, Theodore Giergielewicz, Robert B. Whittmore and Jon J. Vargo are jointly and severally liable and shall pay to the Claimant Anthony C. Hardy the sum of \$25.00, representing attorney's fees.
5. The parties shall bear their respective costs.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Anthony C. Hardy shall be retained by the NASD, Inc. Respondents First Eagle, Inc., Barry E. Fortner, Joseph Jenkins, Jr., Thomas P. Sussman, Norman E. Phillips, Robert C. Valerius, Theodore Giergielewicz, Robert B. Whittmore and Jon J. Vargo are jointly and severally liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

AFFIRMATION

I, **JOHN F. SNYDER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: March 17, 1993