

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant:

Peter Russell Certo, Sr., administrator

91-02475

Name of Respondent:

Phoenix Equity Planning Corporation

REPRESENTATION

For Claimant: Urban Mulvehill, Esq. of O'Neill, DiManno & Kelly.

For Respondent: No attorney of record.

CASE INFORMATION

Claimant filed a Statement of Claim, undated, but received by the NASD on August 8, 1991. Claimant executed a Submission Agreement on July 29, 1991.

Respondent filed a Statement of Answer, undated, but received by the NASD on October 7, 1991 and executed a Submission Agreement on October 4, 1991.

HEARING INFORMATION

Pre-Hearing Conference: None.

Hearing Date/Sessions: February 25, 1992 - one session.

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleged that prior to his wife's death, she owned 504 shares of the Chase Convertible Fund of Boston, Inc. which subsequently became the Phoenix-Chase Convertible Fund Series ("P-C Fund") in March of 1982. Claimant further alleged that he is the sole beneficiary of his wife's estate and that he has demanded delivery of the shares from Respondent, who is the national distributor of the P-C Fund. Claimant further alleged that Respondent has failed to deliver these shares or otherwise account for them.

Respondent maintained that it had conducted a review of the 1979 shareholder account records of the Chase Convertible Fund of Boston, Inc. and that the

account number in the name of Claimant's wife was closed on June 27, 1979 through three transactions as follows: on May 21, 1979, .083 shares were transferred to an account in the name of Polly & Co. Fractional Share Account, on June 11, 1979, 300 shares were transferred to an account in the name of First Wall Street Settlement Corporation, and on June 27, 1979, 204 shares were transferred to an account in the name of Cede & Co.

RELIEF REQUESTED

Claimant requested compensatory damages of \$18,000.00 for the value of the shares as well as dividend payments from 1979 to present that should have been reinvested. At the hearing, Claimant requested damages of \$28,724.00 which was calculated as the 504 shares valued at their current price plus a compounded value at 10% since 1979.

Respondent requested dismissal of the claim.

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 the claimant's claim against the Respondent is dismissed in its entirety; and
2. That each side is to bear its own costs, including attorney's fees.


FORM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD will retain the Claimant's \$300.00 hearing session deposit for form fees.

However, the Respondent is directed to reimburse the Claimant \$300.00 for the hearing session deposit he previously paid to the NASD.

The NASD will retain the Claimant's \$100.00 non refundable claim filing fee.

Concurring Arbitrator's Signature:


Dora M. Lassinger
Public Arbitrator/Chairperson

Date of Decision: March 9, 1992