

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Michael & Rebecca Donaldson

Case No. 91-02646

Name of Respondents

William D. Tharp  
Investment Management & Research, Inc.

REPRESENTATION

For Claimants, Michael and Rebecca Donaldson ("the Donaldsons"): Robert M. Roth of Investors Arbitration Services, Inc.

For Respondent, William D. Tharp ("Tharp"): David A. Townsend, Esq. of Townsend & Brannon.

For Respondent, Investment Management & Research, Inc. ("IM&R"): Guy M. Burns, Esq. of Johnson, Blakely, Pope et al.

CASE INFORMATION

Statement of Claim filed: August 27, 1991 and amended January 16, 1992. Claimants' Submission Agreement signed: August 19, 1991.

Respondent, Tharp's, Statement of Answer filed: October 10, 1991. Tharp's Submission Agreement signed October 3, 1991.

Respondent, IM&R's, Statement of Answer filed May 1, 1992. Respondent, IM&R, did not sign a Submission Agreement as required by Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

On October 20, 1992 and December 11, 1993, in Tampa, Florida, hearings lasting five (5) sessions were conducted.

## **CASE SUMMARY**

Claimants alleged that they were unsophisticated investors when, through various misrepresentations and omissions of material facts, Respondent, Tharp, induced them into investing their entire worldly assets in Hunter Environmental Services, Inc. stock which was unsuitable for Claimants in light of their stated investment objectives of safety of principal. Claimants also alleged that they were further induced to purchase shares of the same stock on margin. Claimants asserted the following Claims against Respondents:

1. Fraud, Deceit And Omission of Material Fact;
2. Suitability;
3. Intentional Misrepresentation of facts;
4. Violation of NASD Rules of Fair Practice, Article III, Section 2 "Recommendations to Customers." And Section 27 "Supervision";
5. Breach of Fiduciary Duty;
6. Negligent Misrepresentation;
7. Breach of The Implied Covenant of Good Faith And Fair Dealings;

Respondents, denied all allegations of wrongdoing contained in the Statement of Claim and IM&R maintained that Claimant, Mr. Donaldson, is a sophisticated investor and that the investment strategy utilized by, Tharp, with respect to the purchases in dispute, was in accord with the risk anticipated and agreed to by Claimants and was fully authorized by Claimants.

## **RELIEF REQUESTED**

Claimants requested an Award of compensatory damages of \$25,370.00, pre and post-award interest as allowed by law, cost of the arbitration including reasonable consulting fees, expert witness fees and any other costs deemed reasonable and just.

Respondents requested dismissal of Claimants' 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found liable, jointly and severally, and shall pay to the Claimants the amount of \$8,500.00 plus post-judgment interest at 12% per annum from the date of the Award to the date of payment of the Award.

2. Claimants' requests for pre-judgment interest and costs are denied.

### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure the Panel has assessed forum fees in the amount of \$2,000.00 (five sessions x \$400.00 per session).

1. Claimants are hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited in full satisfaction thereof.

2. Respondents are hereby assessed \$1,600.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimants.

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

### ARBITRATION PANEL

#### Concurring Arbitrators' Signatures

\_\_\_\_\_/s/  
John P. Cullem, Esq.

Public/Chairman

\_\_\_\_\_/s/  
Albert Roberts

Industry/Panelist

\_\_\_\_\_/s/  
Jordan Lederer

Public/Panelist

DATE OF DECISION: MARCH 24, 1993