

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
: Lorinda M. and Mark J. Lowe :
: :
: Claimants :
: CASE #91-03154
vs. : AWARD
: :
Malone & Associates, Inc. :
Wayne Wheeler :
: Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 8, 1991, Claimants, Lorinda M. and Mark J. Lowe, who appeared Pro Se, alleged that during the period of November 20, 1990 to December 19, 1990 Respondent Wayne Wheeler deceived them into investing with him while employed with Respondent, Malone & Associates, Inc. by promising to "double their money" within two months and guaranteeing low risk. Claimants further alleged that Respondent, Wayne Wheeler knowingly sold them unsuitable stocks for their investment needs, which eventually became worthless. Claimants contended that Respondents took advantage of them, thus causing them to sustain losses in their account.

Respondent, Malone & Associates, Inc. by and through its former President, Robert G. Malone, maintained that during the period of November 20, 1990 to December 19, 1990 Respondent, Wayne Wheeler owned and operated a franchise branch office of Malone & Associates, Inc. Respondent, Malone & Associates, Inc. further maintained that Respondent, Wayne Wheeler entered into a Branch Agreement in which Respondent, Wayne Wheeler agreed to fully indemnify and hold harmless Respondent, Malone & Associates, Inc. from all claims arising from his failure to comply with any applicable law. Respondent, Malone & Associates, Inc. contended that pursuant to the Branch Agreement, Respondent, Wayne Wheeler is solely responsible for all losses suffered by Claimants due to his deliberate misleading of his clients and the giving of a guarantee they could "double their money", without the knowledge and consent of Respondent, Malone & Associates, Inc. Respondent further contended that they ceased conducting a securities business on January 23, 1991 and are in the final stages of liquidation and

have since transferred Claimants long positions to Sunpoint Securities, the brokerage firm that Respondent, Wayne Wheeler had associated himself with. Respondent asserted that they did their utmost to supervise it's representatives but cannot be held liable for actions taken by Respondent, Wayne Wheeler without their consent.

Respondent, Wayne Wheeler failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants, Lorinda M. and Mark J. Lowe requested \$7,945.28 in actual damages.

Respondent, Malone & Associates, Inc. requested the claim be dismissed.

Respondent, Wayne Wheeler failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul T. Green, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 30, 1991, by the Respondent, Malone & Associates, Inc. on December 11, 1991 and not by Respondent, Wayne Wheeler as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Wayne Wheeler was served a copy of the Statement of Claim by regular mail on November 8, 1991 and given an opportunity to respond, which he failed to do. Respondent, Wayne Wheeler was notified on December 20, 1991, via certified mail, that his Statement of Answer was overdue. Although the correspondence sent certified mail was returned "unclaimed", the correspondence sent regular mail was not returned, evidencing receipt of this correspondence. Respondent, Wayne Wheeler failed to file an Answer to the Statement of Claim.

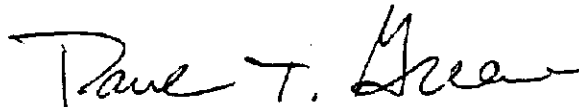
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent, Wayne Wheeler was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

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

1. Respondents, Malone & Associates, Inc. and Wayne Wheeler are jointly and severally liable and shall pay to the Claimants, Lorinda M. and Mark J. Lowe the sum of \$7,945.28 in damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents, Malone & Associates, Inc. and Wayne Wheeler are jointly and severally liable and shall pay to the Claimants, Lorinda M. and Mark J. Lowe, the sum of \$75.00 as partial reimbursement.

AFFIRMATION

I, **PAUL T. GREEN**, 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 26, 1992

STATE OF: Connecticut

SS:

COUNTY OF: Fairfield

On this 23 day of March 1992, before me personally appeared PAUL T. GREEN to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

William C. Hunsott
Notary Public

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