

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

John Lane & Robert Panarello

91-03450

Name of Respondents

Bailey, Martin & Appel Inc  
Charles Marwell, III  
Stephen Harrington  
Howard Appel

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REPRESENTATION

For Claimants John Lane & Robert Panarello ("Claimants"): Messrs. Lane and Panarello represented themselves.  
For Respondents Bailey, Martin & Appel Inc. ("Bailey"), Charles Marwell, III ("Marwell"), Stephen Harrington ("Harrington"), and Howard Appel ("Appel"): Stephen Harrington, of CENPAC Securities.

CASE INFORMATION

Statement of Claim filed: November 4, 1991.  
Claimants' Submission Agreement signed on: October 16, 1991.

Joint Statement of Answer filed by Respondents on: December 13, 1991.  
Respondent Bailey's Submission Agreement signed on: December 6, 1991.  
Respondent Marwell's Submission Agreement signed on: December 6, 1991.  
Respondent Harrington's Submission Agreement signed on: December 6, 1991.  
Respondent Appel's Submission Agreement signed on: December 6, 1991.

HEARING INFORMATION

Hearing Date/Session: April 14, 1992/1 session  
Hearing Location: NASD, Boston, MA.

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#### CASE SUMMARY

Claimants alleged Respondents recommended unsuitable investments; breached the fiduciary duty owed to Claimants; failed to disclose material facts; made unauthorized trades and failed to follow Claimants' instructions regarding trades concerning Lifeline Health Care Group, Temporary Time Capital Corporation, Longwood Group, Ltd. and other purchases.

Respondents alleged Mr. Panarello acknowledged he was experienced and had previous knowledge of investing in the stock market; that Mr. Marwell had determined Claimants' investments were based on their objective of short-term profits and speculation in aggressive growth stocks and that Respondents did not breach the fiduciary duty owed to Claimants; disclosed material facts; denied any trades were unauthorized and followed Claimants instructions regarding execution of trades. Finally, Respondents denied all other allegations made by Claimants.

Respondent Harrington submitted a Motion to Dismiss based on the allegation that he was not the registered representative on this account nor did he correspond directly with the Claimants regarding their account nor did he serve in any supervisory capacity over the activities of Marwell.

#### RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$15,638.93 and punitive damages in an unspecified amount.

Respondents requested: Claimants' claims be dismissed.

#### OTHER ISSUES CONSIDERED & DECIDED

On April 14, 1992, Claimants, John Lane and Robert Panarello entered into a Consent Agreement with Respondents Bailey, Martin & Appel, Inc., Charles Marwell III, Howard Appel, and Stephen Harrington. On May 29, 1992, the NASD received a letter from Robert Panarello stating that the Respondents were in default of the above-referenced Consent Agreement.

#### 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

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determination as follows:

- 1- Respondents are liable, jointly and severally, in the amount of \$15,000.00;
- 2- Claimants' claim of punitive damages is denied;
- 3- Respondent Harrington's Motion to Dismiss is denied;
- 4- All other claims are denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

1 session X \$400.00 = \$400.00

Forum fees Assessed Against:

1- Respondents, jointly and severally, in the amount of \$400.00; however, in lieu of payment to the NASD, Respondents shall reimburse to Claimants the \$400.00 hearing session deposit previously deposited by Claimants.

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

Concurring Arbitrators' Signatures

  
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David E. Marsan/Public Arbitrator

Date of Decision: July 24, 1992

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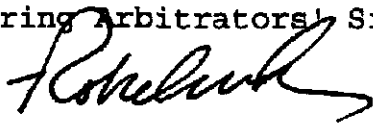
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Robert W. Cook/Industry Arbitrator  
*CR00K*

Date of Decision: July 24, 1992

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Janice M. Mendes/Public Arbitrator

Date of Decision: July 24, 1992