

## N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Lindsay H. Welling, Jr.

vs.

Case #  
91-03518

Name of Respondent

Robert V. Ballard

REPRESENTATION

Lindsay H. Welling, Jr. ("Claimant") represented himself.

For Respondent, Cowen &amp; Co., Inc. ("Cowen"), Daniel J. Donovan, Esq., form the firm of Cowen &amp; Company.

Robert V. Ballard ("Ballard") represented himself.

CASE INFORMATION

Statement of Claim was filed on November 6, 1991.

Claimant's Submission Agreement was signed on November 4, 1991.

Cowen's Statement of Answer was filed on December 26, 1991.

Cowen's Submission Agreement was signed on December 23, 1991.

Ballard's Statement of Answer was filed on September 21, 1992.

Ballard did not executed a Submission Agreement.

HEARING INFORMATION

Hearing Date/Hearing Sessions: October 7, 1992 - Two sessions.

Hearing Location: Desmond Americana at 660 Albany-Shaker Road, Albany, New York.

CASE SUMMARY

Claimant alleges that he is a retired airline pilot who had to retire at the mandatory retirement age of sixty and that Ballard was award of this.

Claimant states that he advised Ballard of his investment objectives when Ballard was employed by Alex Brown & Sons. Claimant states that his investment philosophy was preservation of purchasing power and that preservation of capital and that no more than ten percent of his funds could be invested in lower quality investment provided there was strong evidence for better than average appreciation. Claimant alleges that the purchase of Boulder Gold in his Individual Retirement Account was unsuitable for him in light of his investment desire.

Claimant states that he was unaware that this investment was traded on the Vancouver Stock Exchange ("VSE"). Claimant contends that he seeks compensatory damages because Ballard purchase security on a stock exchange which Forbes magazine calls the "Scam Capital of the World" and because Ballard did not advise him of the nature of VSE.

Respondent denies liability and states that the Boulder Gold investment was one issue in a portfolio of precious metals stocks and was never meant to achieve Claimant's investment goals standing alone.

#### RELIEF REQUESTED

Claimant requests an award of \$7,699.00, plus interest and the costs incurred in bringing this case.

Ballard requests that the claim be dismissed.

#### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

By letter dated August 31, 1992, Claimant withdrew his claim against Cowen. Prior to the hearing, Claimant filed a Motion to Bar Ballard from presenting any matter, arguments or defense at the hearing. That Motion was referred to an arbitrator and was denied.

On September 21, 1992, Ballard filed a Motion to Dismiss the Statement of Claim and requested that it be heard prior the hearing date. The bases for the Motion are: (1) the exact claim was submitted to arbitration and was dismissed; and (2) since Cowen has settled the matter with Claimant, the only remaining party is Ballard and that dismissal is in order pursuant to the doctrine of res judicata. Claimant objected to this Motion. This arbitrator denied the Motion and requested that the parties be prepared to argue the Motion at the hearing. Prior to the commencement of the hearing arguments were heard and the Motion was denied.

#### 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. All claims against Ballard are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Forum fees in the amount of \$400.00 for two hearing sessions are assessed and shall be borne equally by the parties so that Claimant is assessed \$200.00 and Ballard is assessed \$200.00;
2. Claimant is further assessed \$75.00 in non-refundable filing fees;
3. Claimant deposited \$275.00 which shall be applied to the fees assessed.

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

Arbitrator's Signature

  
Andrew N. Carnell, Esq.  
Sole Public Arbitrator

Execution

Date of Execution:

10/28/92

Dated by the NASD: November 11, 1992