

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	:	
Anthony and Eileen DeMichael	:	
	:	
Claimants	:	CASE #92-01253
	:	AWARD
	:	
vs.	:	
	:	
Quick & Reilly, Inc.	:	
John Crofton	:	
	:	
Respondents	:	

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 10, 1992, Claimants Anthony and Eileen DeMichael who appeared Pro Se, alleged that on January 8, 1992 they placed an order to sell 1500 shares of Equimark stock at 3-3/8 "good until cancelled" through Martina Blessing, a registered representative with Respondent Quick & Reilly, Inc. and subsequently, on January 13, 1992 Claimants were advised that their stock had been sold, at which time, Claimants were unaware of the Rights issue at the time of the sale as to the ex-dividend date and Respondent Quick & Reilly, Inc. made no mention of it. Claimants further alleged that the stock was delivered and the transaction settled prior to the January 21, 1992 settlement date whereby Claimants received no notification of Rights to be delivered with the stock. Claimants contended that the following week they received 1875 Rights in the mail from Mellon Bank, since they were the "holder of record" on January 10, 1992 and Claimant Anthony DeMichael contacted Ms. Blessing, the registered representative who sold the 1500 shares, at which time, he advised her that they just received Rights and wanted to know how they worked. Claimant further contended that Ms. Blessing advised them that Respondent Quick & Reilly, Inc. could act as agent to buy at \$2.00 a share or they could go directly to Mellon Bank, the transfer agent, with no commission in that case. Claimants asserted that they decided to buy 1875 shares at \$2.00 per share directly from Mellon Bank and on or about January 21 or January 22, 1992 Claimant Anthony DeMichael sent a cashier's check to Mellon Bank for the 1875 shares for \$3,750.00. Claimants further asserted that on January 29, 1992 they received a dividend notice from Respondent Quick & Reilly, Inc. and subsequently, on January

30, 1992 Claimant Anthony DeMichael received a telephone call from Respondent John Crofton, manager of Respondent Quick & Reilly, Inc., advising them that the Rights did not belong to Claimants. Claimants further alleged that he informed Respondent John Crofton that they had already sent their check and the Rights to exercise the buying of 1875 shares from Mellon Bank, at which time, Respondent John Crofton requested that they contact Mellon Bank to have them send the Rights to Respondent Quick & Reilly, Inc. and refund the \$3,750.00 to Claimants. Claimants argued that Mellon Bank could not honor Respondent John Crofton's request and when Claimant Anthony DeMichael notified Respondent John Crofton of this fact, he urged Claimants to return the stock after the bank sent it to them which would be beyond the February 10, 1992 expiration date whereby Respondent Quick & Reilly, Inc. would take the stock and refund their \$3,750.00. Claimants further argued that they continued to trade with Respondents at this time and sold other stock during this period whereby Respondents did not honor the settlement date of February 11, 1992 and held their money due to the unresolved problem with the Rights. Claimants further contended that they sent the 1875 shares to Respondent Quick & Reilly, Inc. under protest, and requested that Respondents send all their payments due that would close out their account. Claimants further asserted that they believe Respondents have taken unfair advantage of the situation and acted unfairly whereby the matter could have been resolved differently, therefore, Claimants should be compensated.

Respondents, Quick & Reilly, Inc. and John Crofton by and through their in-house counsel Nicholas J. Chohey, Esq., maintained that on January 8, 1992 Claimants Anthony and Eileen DeMichael placed an order with their registered representative, Martina Blessing, to sell 1500 shares of Equimark Inc. stock at 3-3/8 with an "all or none" restriction, and subsequently, on January 13, 1992, this order was executed at 3-3/8 per share and verbally reported to the Claimant with a written confirmation mailed the following morning. Respondents further maintained that approximately one week later, Claimant Anthony DeMichael contacted their office to inquire about his options on a Rights certificate he had received in the mail, at which time, Claimants did not state that he had recently sold the shares in the underlying stock and Ms. Blessing advised him of the exercise procedures regarding all Rights issues. Respondents contended that Ms. Blessing conversation with Claimant Anthony DeMichael was general in nature and at no time did Claimant Anthony DeMichael specifically reference his account, nor was Mellon Bank mentioned as a Transfer Agent. Respondents further contended that on January 22, 1992 they were notified that the New York Stock Exchange ("NYSE") had set an "Ex-date" of January 14, 1992, and per NYSE regulation 2237, any stock sold prior to January 14,

1992 was sold with the Rights payment as condition of good delivery for settlement, therefore, Claimants were not entitled to the Rights per these terms. Respondents asserted that on January 22, 1992, Claimants account was charged 1875 Rights per the terms of the dividend and subsequently, on January 30, 1992, Respondent John Crofton contacted the Claimants to Explain that the Rights were not theirs and that Respondent needed to receive them to balance their account, at which time, claimant Anthony DeMichael informed Respondent John Crofton that he had already submitted these Rights for exercise with Mellon Bank. Respondents further asserted that at this point, Respondent John Crofton informed Claimants of their options in order to ensure no trading loss of the erroneous Rights delivery whereby, Claimants could get their money and Rights back from Mellon Bank and deliver the Rights to Respondent Quick & Reilly, Inc. or to deliver the stock to Respondent Quick & Reilly, Inc. once they received it and Respondent Quick & Reilly, Inc. would refund the \$3,750.00 that was paid to exercise the Rights. Respondents argued that on March 3, 1992 they received a certificate for 1875 shares of Equimark stock as promised by Claimants and on March 9, 1992, a check for \$8,635.65 was sent to Claimants in full settlement of their account, therefore, Claimants did not realize any loss due to the sale of stock during a due bill period and Claimants should not be awarded case on rights that they never owned.

RELIEF REQUESTED

Claimants, Anthony and Eileen DeMichael requested \$3,891.00 in actual damages.

Respondents Quick & Reilly, Inc. and John Crofton requested the claim be dismissed.

AWARD

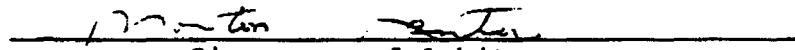
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Morton Kanter, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 30, 1992 by the Respondents Quick & Reilly, Inc. on June 10, 1992 and by the Respondent John Crofton on July 14, 1992.

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. The claims of Claimants Anthony and Eileen DeMichael against Respondents Quick & Reilly, Inc. and John Crofton are dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Anthony and Eileen DeMichael shall be retained by the NASD, Inc. Respondents Quick & Reilly, Inc. Respondents Quick & Reilly, Inc. and John Crofton are jointly and severally liable and shall pay to the Claimants the sum of \$62.50 as partial reimbursement.

AFFIRMATION

I, **MORTON KANTER**, 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: October 6, 1992