

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Robert E. Miller

92-01513

Name of Respondents

Dain Bosworth, Inc. and  
Don Nelson

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**REPRESENTATION OF PARTIES**

For Claimant, Robert Miller, at the hearing: Robert D. Maher, Esq. of Best & Flanagan, Minneapolis, Minnesota.

For Respondents, Dain Bosworth and Don Nelson, at the hearing: Tom Vitt, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed: April 30, 1992. Claimants' Submission Agreement signed on: April 16, 1992.

Joint Statement of Answer filed by Respondents on: June 24, 1992. Respondent Dain Bosworth, Inc.'s Submission Agreement signed on: June 22, 1992. Respondent Don Nelson's Submission Agreement signed on: June 17, 1992.

**HEARING INFORMATION**

Hearing date: November 10, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

**CASE SUMMARY**

Claimant Robert Miller ("Miller") alleged that Respondents Dain Bosworth and Don Nelson ("Respondents") breached a contract with Miller by failing to execute the trade directed by Miller. Miller also alleged that Don Nelson owed a duty to exercise due care in executing all instructions given by Miller, and that Nelson breached that duty by failing to execute the

trade directed by Miller. Miller also alleged that Dain Bosworth is vicariously liable for the damages suffered by Miller under the doctrine of respondeat superior. Miller alleged that Respondents violated Section 10(b) of the SEC Act of 1934, Rule 10b-5, Minnesota Statute Section 80A.01, and Section 80A.23.

Miller alleged that he established a qualified defined contribution retirement plan at Dain Bosworth. Miller alleged that in August 1991, all of the plan's assets, over \$60,000, were invested in Treasury bonds. Miller alleged that at that time, he decided to sell the Treasury bonds and purchase with the proceeds 3,100 shares of Zeos International stock. Miller alleged that he instructed Nelson to sell the stock before the fourth quarter report, and Nelson did not follow his instruction to sell.

Dain Bosworth and Don Nelson denied any liability. Respondents alleged that they followed Miller's instruction and when the order could not be filled at the price he had instructed, attempted to reach him to change the order. Respondent's further alleged that even after his order was not filled, Miller chose to hold the Zeos stock for over a month as the price declined further. Respondents alleged that Miller's losses are the result of market forces, not Respondent's actions.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of at least \$26,850, plus attorney's fees, interest, costs, and any further relief which the arbitrators may determine at the hearing.

Respondents requested that the Statement of Claim be dismissed with prejudice, and that they be awarded their costs, and reasonable attorney's fees, and any other relief as the panel may deem proper.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 original remains on file with the NASD.

At the hearing, the Claimant moved to amend his Statement of Claim pursuant to Section 39 of the NASD Code of Arbitration Procedure. The panel denied the motion as not being timely.

**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. Respondents Dain Bosworth, Inc. and Don Nelson, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Robert Miller, damages in the sum of Twelve Thousand Four Hundred Dollars (\$12,400.00);
2. Respondents Dain Bosworth, Inc. and Don Nelson, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Robert Miller, interest at eight percent (8%) on the amount stated above in number (1.), beginning to accrue on February 26, 1992;
3. Claimant's request for attorney's fees is denied;
4. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for below under Forum Fees.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions X \$300.00 = \$600.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$300.00 are assessed against the Respondents Dain Bosworth, Inc. and Don Nelson, jointly and severally. Respondents Dain Bosworth and Don Nelson, jointly and severally, shall also reimburse the Claimant Robert Miller for the hearing session deposit previously deposited with the NASD in the amount of \$300.00.

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

**By The Arbitration Panel:**

Dated:

January 14, 1993

D. Randall Blohm, Esq.

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Presiding

Public Arbitrator

Date Award Served By The NASD: January 21, 1993