

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Wheat, First Securities, Inc.

92-01605

Name of Respondent

Kin W. Cheng

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REPRESENTATION

For Claimant: John Ivan, Esq. in house attorney at Wheat First Securities.

For Respondent: Randy M. Kornfeld, Esq. of Randy M. Kornfeld, P.C.

CASE INFORMATION

Statement of Claim filed: May 11, 1992.

Claimant's Submission Agreement signed on: July 11, 1992.

Statement of Answer and Counterclaim filed by Respondent Kin Cheng on: August 26, 1992.

Respondent Kin Cheng's Submission Agreement signed on: August 2, 1992.

HEARING INFORMATION

Hearing Date/Sessions: December 3, 1992, 1 Session.

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondent breached his contract with Claimant and committed fraud; in September 1991 Respondent Kin Cheng ordered the sale of 50,000 shares of DCX but he

delivered a 50,000 share certificate actually worth only 200 shares due to a 1-250 reverse split in DCX in 1989. Claimant further alleged that Claimant acted as an agent for Respondent and was obligated to deliver 50,000 shares to the purchaser. Thus, based on the spread of a low price penny stock and market conditions, Claimant incurred a \$30,726.00 loss on the resulting buy-in. Claimant further alleged that Respondent made deposits totalling \$6,000.00 toward his debit but has refused Claimant's demand to pay the deficiency debit of \$24,726.32 as required by law and in the Securities Account Agreement executed by him.

Respondent maintained he never received any information regarding a reverse split, and in September 1991 he did not know of the reverse split. Respondent further maintained he turned over the stock certificate to Claimant for sale, and Claimant took no steps whatsoever to verify the transactions. Respondent further maintained that at no time did he agree to reimburse Claimant and the \$6,000.00 tendered was for other purposes. Respondent asserted a counterclaim for the return of the \$6,000.00 previously deposited with Claimant, together with interest and costs.

#### **RELIEF REQUESTED**

Claimant requested \$24,726.32 in deficiency debit balance; \$535.00 pre-filing interest on debit balance and \$800.00 arbitration filing fees and additional costs and expenses and dismissal of Respondents' counterclaim.

Respondent requested dismissal of claims and a counterclaim of \$6,000.00.

#### **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. Respondent be and hereby is liable and shall pay Claimant the sum of \$15,950.88 inclusive of interest.
2. Respondent be and hereby is liable and shall pay Claimant \$262.50 to represent Claimant's filing fees and hearing session deposit.
3. Respondent's counterclaim be and hereby is denied in its entirety.
4. Each party shall bear its own costs including attorneys' fees.


FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

1 session X \$500.00 = \$500.00 less \$500.00 hearing session deposit = 0 net due.

The NASD shall retain the \$500.00 claim filing fee and \$300.00 hearing session deposit deposited by Claimant and the \$75.00 claim filing fee and \$200.00 hearing session deposit deposited by Respondent.

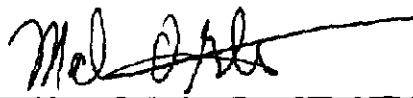
ARBITRATOR SIGNATURE

  
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Stan West  
Public Arbitrator

Date of Decision: December 22, 1992

STATE OF: *New York*  
COUNTY OF: *New York* S.S.:

On this *21<sup>st</sup>* day of *December*, 1992, before me personally appeared Stan West known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

  
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MARK O. GLUT  
Notary Public, State of New York  
No. 4005100  
Qualified in Queens County  
Comm. Expires April 20, 1994