

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.

92-02053

Name of Respondent

Elias Bsharah

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**REPRESENTATION**

For Claimant Wheat First Securities, Inc. ("Claimant"): Martin J. Glasser, Esq.  
of the law firm of Lewis, Friedberg, Glasser, Casey & Rollins.

For Respondent Elias Bsharah ("Respondent"): Arthur T. Ciccarello, Esq. of the  
law firm of Ciccarello Del Giudice & La Fon

**CASE INFORMATION**

Statement of Claim filed: June 18, 1992

Claimant's Submission Agreement signed on: June 12, 1992

Claimant's Reply to the Counterclaim filed on: November 5, 1992

Statement of Answer and counterclaim filed by Respondent on: October 2, 1992

Respondent's Submission Agreement signed on: September 29, 1992

**HEARING INFORMATION**

Pre-Hearing Conference: August 5, 1993 - one session

Hearing Dates/Sessions: March 22, 1994 - two sessions  
March 23, 1994 - two sessions

Hearing Location: Omni Hotel, Richmond, Virginia

### **CASE SUMMARY**

Respondent entered into a Securities Account Agreement for a cash account with Claimant in September 1990. Later, in October, 1990, Respondent entered into a Securities Account Agreement Margin Account. Respondent purchased 10,000 shares of Centocor stock in January 1992 and an additional 10,000 shares of the same stock in February 1992. Claimant alleges that as a result of a drop in the value of Centocor stock, a margin call was made on Respondent's account. Claimant further alleges that Respondent was unable to meet the call and Claimant had the right to, and did sell the stock on April 16, 1992, creating a deficiency in Respondent's account in the amount of \$95,294.74 including interest as of June 1, 1992 (\$106,613.00 as of March 23, 1994), which Respondent has refused to pay. Claimant also requests attorney's fees in the amount of \$30,000 and its costs expended.

Respondent maintains that Claimant did not provide him with adequate time to cover the deficiency. Respondent further maintains that Respondent wrongfully recommended the purchase of the shares of Centocor stock as well as Artistic Greetings, Inc., that Claimant made fraudulent misrepresentations with respect to its recommendations and that it violated the "Know Your Customer" rule. As a result of these actions Respondent alleges that he suffered economic damages and incidental damages, including health problems from a heart attack.

Claimant denied all allegations of wrongdoing asserted by Respondent in his counterclaim and maintains that Respondent's account was handled properly at all times.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$95,295.74, plus interest from June 1, 1992 to the date the award is paid at the rate of 3/4 of 1% over the prime rate; Claimant also requests costs and reasonable attorney's fees. Claimant requested that Respondent's counterclaim be dismissed in its entirety.

Respondent requested economic damages in the amount of \$735,200.00 and \$5,000,000.00 in incidental damages. Respondent requests the award of such damages, plus \$15,000 in attorney's fees and his costs expended.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearings in March 1994, Respondent requested leave to take depositions of

a treating physician, whom it proffered would provide testimony linking events of April 1992 with Respondent's heart attack. Respondent's request was taken under advisement.

### **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 determination as follows:

1. Evidence as to Respondent's level of business and investment acumen, whether Respondent or Claimant made recommendations as to the purchase of securities by Respondent, and the nature of representations made by Claimant with respect to such people were hotly contested. With respect to these issues, the Panel finds on balance, Claimant's evidence to be more persuasive. The Panel concludes that Claimant had the right to liquidate Respondent's account as it did and that it is entitled to compensatory damages in the amount of \$106,613.00 and attorney's fees in the amount of \$30,000.

Therefore Respondent shall pay to Claimant the amount of \$136,613.00; this amount is inclusive of interest.

2. With respect to Respondent's counterclaim, the Panel finds that the greater weight of the evidence is that Respondent had sufficient knowledge and background to engage in the investment philosophy chosen for his account, that Claimant did not violate the "Know Your Customer" rule and that it did not make fraudulent misrepresentations with regard to the securities it recommended for purchase to Respondent. The Panel concludes that Respondent has suffered no legally compensable injury. In light of this ruling, Respondent's motion for leave to take depositions is denied as moot.

3. Costs of these proceedings are assessed below.

4. All other claims asserted in these proceedings are denied in their entirety.

**FORUM FEES**

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

Event	Party to Whom Assessed	Amount Assessed	Amount previously deposited
Pre hearing Conference	Respondent	\$300	\$0
Hearing - 8/17/93 1 session	Respondent	\$1,000	\$1,500
Motion for Continuance	Respondent	\$250	\$1,000
Motion for Continuance	Claimant	\$100	\$1,000
Hearing - 3/22/94 2 sessions	Claimant	\$1,500	\$600
Hearing - 3/23/94	Respondent	\$3,000	\$0
Total		\$6,150	\$4,100

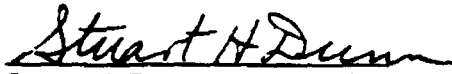
Claimant is assessed forum fees and postponement fees in the amount of \$1,600. Claimant is entitled to offset this amount with fees it previously deposited totalling \$1,600; so that no more fees are due from Claimant.

Respondent is assessed forum fees and postponement fees in the amount of \$4,550. Respondent is entitled to offset this amount with fees he previously deposited totaling \$2,500; so that the amount due from Respondent is \$2,050

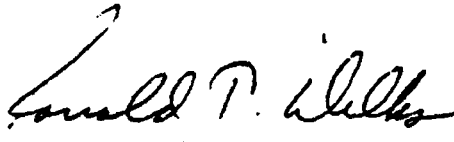
Fees are payable to the National Association of Securities Dealers, Inc.

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Concurring Arbitrators' Signatures  
Name  
Public/Industry

  
Stuart H. Dunn, Esq. - Chairperson  
Public Arbitrator

  
Larry J. Murphy  
Public Arbitrator

  
Ronald T. Dilks  
Industry Arbitrator

NASD Date of Decision: April 22, 1994