

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Jack T. & Bonnie J. Christie

92-02807

Name of Respondent

Wheat First Securities, Inc.

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**REPRESENTATION**

For Claimants Jack T. and Bonnie J. Christie ("Claimants"): L. Bruce McDaniel, Esq. of the law firm of DeBank, McDaniel & Anderson.

For Respondent Wheat First Securities, Inc. ("Respondent"): Jonathan M. Harris, Managing Director and General Counsel of Wheat First Securities, Inc.

**CASE INFORMATION**

Statement of Claim filed: August 19, 1992

Claimant Jack T. Christie's Submission Agreement signed on: August 18, 1992

Claimants' Joint Submission Agreement signed on: August 26, 1992

Statement of Answer filed by Respondent on: October 21, 1992

Respondent's Submission Agreement signed on: October 19, 1992

**HEARING INFORMATION**

Hearing Dates/Sessions:    May 6, 1993 - two sessions  
                                     May 7, 1993 - two sessions  
                                     May 8, 1993 - two sessions

Hearing Location: Omni Hotel, Norfolk, Virginia

### **CASE SUMMARY**

Claimants alleged that when they opened an account with Respondent in January of 1988, they informed Respondent's agent, a registered representative, that they were unsophisticated investors interested in conservative and virtually risk-free investments, with no speculation or speculative securities. Claimant's alleged that Respondent, through its agent, falsely represented that among other things, that Service Merchandising Co. was a good, solid and conservative investment. Claimants asserted that this stock was in fact a speculative and promotional security, with no basis for Respondent's agent's false representations. Claimants alleged that Respondent committed securities fraud by the sale of unsuitable securities based on false and misleading misrepresentations and material omissions. Claimants alleged the following additional violations: (1) Breached of Fiduciary Duty, (2) Common Law Fraud, and (3) Negligence.

Respondent categorically denied all allegations of wrongdoing and maintained that Respondent and its agent properly handled Claimants' account at all times. Respondent maintained that all allegations alleged by Claimants are barred by the relevant statutes of limitations. Respondents maintained there was no negligence or fraud committed by Respondent or anyone associated with it. Respondents maintained that the securities were purchased as an informed investment decision by Claimant Jack Christie ("Christie") and that Christie fully understood the risks and benefits inherent in the securities markets. Respondents maintained that Christie understood his investment decisions and that Claimants received dividends amounting to \$82,000 on their Service Merchandising stock. Respondent maintained that Claimants losses were caused by unforeseeable market events, not by any wrongdoing of Respondent or its agents.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$117,800, punitive damages in the amount of \$750,000, plus interest and attorney's fees as provided by law.

Respondent requested that Claimants' claim be dismissed as being untimely filed; in the alternative, that the claims be dismissed as lacking merit and that Respondent be reimbursed for the expense and cost of defending against Claimants frivolous allegations.

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

The parties have agreed that the Award in this matter may be executed in 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 originals remain on file with the NASD.

That Respondent's motion to dismiss Claimants' claim on the statute of limitations argument was granted as to Claimants' count of Breach of Fiduciary Duty. The Panel found that Claimants did not meet the one year time period to file this count so that the Panel found that this count

was not timely filed. All other allegations were considered in deliberations by this Panel.

**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. That Claimants' claim is denied in its entirety.
2. That Claimants' claim for punitive damages is denied.
3. That the parties shall bear their respective costs and expenses, other than those specifically provided for herein.

**FORUM FEES**

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

6 Hearing Sessions x \$1,000 = \$6,000

Pursuant to Section 43(c) of the Code, the parties are equally assessed hearing session fees. Claimants are assessed fees in the amount of \$3,000, however, Claimants are entitled to offset this amount with their initial hearing session fee of \$1,000 that has been previously deposited so that the amount due from Claimants is \$2,000.

Respondent is assessed forum fees in the amount of \$3,000.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

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Arnald B. Crews, Esq.

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Public Arbitrator

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Francis M. Hall

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Industry Arbitrator

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Public/Industry

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Bruce G. Murphy, Esq.

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Public Arbitrator