

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Stephen J. Tutt

92-03641

Name of Respondents

Schneider Securities, Inc.

Joni L. Merwin

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 28, 1992, Claimant Stephen J. Tutt, who appeared Pro Se, alleged that on June 24, 1991 Respondent Joni L. Merwin, an Agent with Respondent Schneider Securities, Inc., contacted him to solicit him about a stock called Pak Mail Centers of America. Claimant further alleged that the only funds he had were in an IRA account, whereby Respondent Joni L. Merwin informed Claimant that he could transfer the IRA to a holding company and invest the funds. Claimant contended that he requested a prospectus, however; Respondent Joni L. Merwin told him it was illegal for him to get a prospectus, because the offering date was past, but he later found out that it was not illegal for Claimant to have obtained a prospectus, at which time, if Claimant had received a prospectus, he would not have invested in the company. Claimant further contended that the stock dropped in value, at which time, Respondent Joni L. Merwin encouraged him to leave his IRA invested funds in the stock and every subsequent phone call she promised to send Claimant information on Pak Mail Centers of America. Claimant asserted that Respondents Schneider Securities, Inc. and Joni L. Merwin were negligent in the handling of his funds and they never represented to Claimant that this was a highly speculative investment and not an appropriate place for his retirement funds.

Claimant further asserted a Motion to Preclude Respondent Joni L. Merwin's Statement of Answer pursuant to Section 13 of the NASD Code of Arbitration Procedure, whereby she failed to respond in the specified amount of time.

Respondent Schneider Securities, Inc., by and through their Chief Compliance Officer, Barry D. Tull, maintained that Respondent Joni L. Merwin is no longer employed with them and she informed Respondent Schneider Securities, Inc.'s Chief Compliance Officer that she made it clear to the Claimant Dr. Stephen J. Tutt that Pak Mail Centers of America was a speculative investment, whereby; Claimant had signed a document indicating he realized the potential of loss.

Respondent Joni L. Merwin, who appeared Pro Se, maintained that Claimant Dr. Stephen J. Tutt informed her that it did not matter whether the investment was speculative or not, at which time, she sent literature to Claimant about the Pak Mail Centers of America stock. Respondent Joni L. Merwin further maintained that she had regular conversations with Claimant and he never expressed concern or panic regarding this investment whereby Claimant realized that this was a risk and growth situation.

#### **RELIEF REQUESTED**

Claimant Dr. Stephen J. Tutt requested \$2,194.85 in actual damages plus costs.

Respondent Schneider Securities, Inc. requested the claim be denied.

Respondent Joni L. Merwin requested the claim be denied.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John P. Brooks, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 14, 1992, by the Respondent Schneider Securities, Inc. on December 17, 1992 and by the Respondent Joni L. Merwin on January 11, 1993.

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:

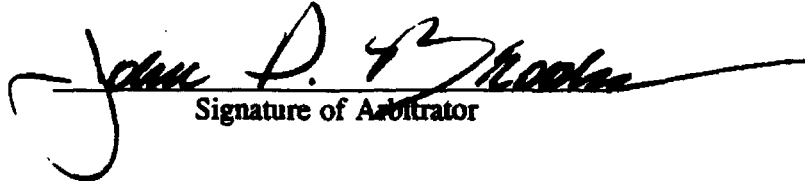
1. Respondents Schneider Securities, Inc. and Joni L. Merwin are jointly and severally liable and shall pay to the Claimant Dr. Stephen J. Tutt the sum of \$2,194.85 in damages.
2. Respondents Schneider Securities, Inc. and Joni L. Merwin are jointly and severally liable and shall pay to the Claimant Dr.

Stephen J. Tutt simple interest at the rate of 5 % per annum from June 26, 1991 to the date of payment of the award.

3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Dr. Stephen J. Tutt shall be retained by the NASD, Inc. Respondents Schneider Securities, Inc. and Joni L. Merwin are jointly and severally liable and shall pay to the Claimant the sum of \$50.00 as reimbursement.

**AFFIRMATION**

I, **JOHN P. BROOKS, ESQ.**, 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:** March 10, 1993