

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration BetweenName of Claimants

J.C. and Jeanette Lindsey

vs.

Case #93-00399

## AWARD

Name of RespondentsF.N. Wolf & Co., Inc.  
William H. King

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 3, 1993, Claimants J.C. and Jeanette Lindsey who appeared Pro Se, alleged that in January, 1992, Claimant J.C. Lindsey received a phone call from Respondent William H. King of Respondent F.N. Wolf & Co., Inc. to introduce himself, whereby a few days later he called Claimant J.C. Lindsey about Digital Products, a company which makes electronics devices worn by convicted criminals and provides the monitoring service so their movements can be reported. Claimants further alleged that Respondent William H. King told Claimant J.C. Lindsey that Digital Products were on the verge of signing a huge contract with Mexico, and also in a strong cash position whereby they would be worth \$25 a share in three or four months. Claimants contended that on January 22, 1992 they bought 500 shares at 5 3/4 and soon thereafter, there was a 5 for 2 reverse split. Claimant further contended that they received the prospectus, from a friend, of CCC Franchising, the holding company of Digital Products, long after their purchase, which stated that Digital Products was undercapitalized, did not have the personnel, and may be not able to compete. Claimants asserted that even when the Digital Products stocks dropped, Respondent William H. King called offering excuses for the drop and urged Claimants to "take a stronger stance" in them. Claimants further asserted that after the purchase of Digital Products, Claimant J.C. Lindsey kept getting calls from Respondent William H. King about Sight Based Media and Treats International Enterprises of Canada, which Respondent William H. King explained were "really hot", whereby on May

20, 1992, Claimant bought 300 shares of Treats at \$4. Claimants further alleged that both stocks dropped in value whereby they had to sell the stocks for a loss. Claimants argued that Respondents used "boiler room" sales techniques and was misled by Respondents to make these purchases, thus, they should be liable for their losses.

Respondents, F.N. Wolf & Co., Inc. and William H. King by and through their counsel James C. Cosby of Maloney, Yeatts & Barr, Richmond, VA., maintained that Claimants J.C. and Jeanette Lindsey had sufficient investment experience to allow them to understand and appreciate all aspects of investing in common stock. Respondents further maintained that Claimants do not identify any statement as false and deny that any guarantees were made in reference to the stocks. Respondents contended that Claimants had possession of the prospectus which they could read and understand, and it pointed out risk factors that would contradict the guarantee of the performance allegedly made. Respondents further contended that because Claimants were in possession of written information that contradicted every misrepresentation alleged to have been made to them, Claimants cannot recover from fraud because their reliance would no longer be justified as a matter of law. Respondents asserted that such an investor is under a duty to ascertain the truth; however, Claimants did nothing but continue to invest. Respondents further asserted that Claimants did not plead a case, did not submit any evidence as to what occurred with the handling of the account, and have chosen not to address any action against the Respondents, and the claim should be dismissed for that reason.

#### **RELIEF REQUESTED**

Claimants, J.C. and Jeanette Lindsey requested the sum of \$3,350.22 in actual damages.

Respondents F.N. Wolf & Co., Inc. and William king requested the claim be dismissed.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc., Code of Arbitration Procedure, a single Public Arbitrator, JAMES G. KILLOUGH, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the

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Claimants on January 27, 1993, by the Respondent F.N. Wolf & Co., Inc. on May 6, 1993 and by the Respondent William H. King on May 5, 1993.

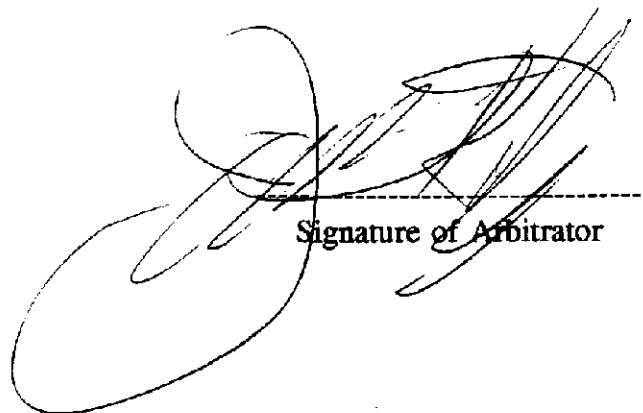
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents request for a Hearing is denied.
2. Respondents F.N. Wolf & Co., Inc. and William H. King are jointly and severally liable and shall pay to the Claimants J.C. and Jeanette Lindsey the sum of Respondent William H. King's commissions received with respect to the securities complained of herein.
3. Respondent F.N. Wolf & Co., Inc. is liable and shall pay to the Claimants J.C. and Jeanette Lindsey the sum of \$3,350.22 in damages, less Respondent William H. King's commissions paid with respect to the securities complained of herein.
4. The parties shall bear their respective costs.
5. The \$125.00 filing fee previously deposited with the National Securities Dealers, Inc. by the Claimants J.C. and Jeanette Lindsey shall be retained by the NASD. Respondents F.N. Wolf & Co., Inc., and William H. King are jointly and severally liable and shall pay to the Claimants J.C. and Jeanette Lindsey the sum of \$62.50, as partial reimbursement.

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**AFFIRMATION**

I, **JAMES G. KILLOUGH**, 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.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is written over a dashed line.

Signature of Arbitrator

Date of Decision: 10/19/93

DATED BY THE NASD, INC.:      October 25, 1993