

**N.A.S.D., INC.**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Bernard M. Ellis

No. 93-00644

**Names of Respondents**

Adams Securities, Washington Investment Corp.,  
Michael Richard Waldman

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**REPRESENTATION OF PARTIES**

Claimant, Bernard M. Ellis was represented by Paul J. Sussman, Esq. of Chicago, Illinois.

Respondent, Washington Investment Corp. was represented by Katherine H. Kalinowski, Esq. of Baber & Kalinowski, Fairfax, Virginia.

Respondent, Adams Securities, Inc. did not file an appearance.

Respondent, Michael Richard Waldman did not file an appearance.

Respondent, James W. Adams did not file an appearance.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. on February 19, 1993.

Claimant, Bernard M. Ellis' Submission Agreement was signed on January 12, 1993.

The Statement of Answer was filed with the NASD by Respondent, Washington Investment Corp. on or about May 3, 1993.

Respondent, Washington Investment Corp.'s Submission Agreement was signed on May 3, 1993 by James R. Johnson, President.

Respondents, Adams Securities, Inc., James W. Adams and

Michael Richard Waldman failed to file Answers to the Claim or executed Submission Agreements with the NASD.

#### HEARING INFORMATION

The hearing took place on October 6, 1993 and lasted for two (2) hearing sessions.

The hearing location was Chicago, Illinois.

#### CASE SUMMARY

Claimant, Bernard A. Ellis ("Ellis") alleged that he was given information regarding the purchase of stock in OMNI USA, Inc. ("OMNI") Ellis asserted that he was informed by Respondent, Michael Richard Waldman ("Waldman"), who was initially an account executive with Respondent, Adams Securities, Inc. ("Adams Securities") and thereafter, Respondent, Washington Investment Corporation ("Washington Investment"), that OMNI was a good opportunity, that it was obtaining various contracts with the Mainland Chinese Government and that the stock should be purchased because the respondents were close to OMNI president, Ed Daniels, who was providing timely information to them.

Based on these conversations, Ellis purchased 40,000 shares of OMNI for his account between the dates of July 1991 and April 1992. Ellis asserted that after his purchase of OMNI stock he could get no information regarding his position in the stock, no information regarding the activities of the corporation and no information regarding the price of the stock.

Ellis asserted that Respondents breached their contract with him and failed to notify and disclose to him material facts relating to OMNI. Respondents also allegedly breached their fiduciary duty owed to Ellis and violated the anti-fraud provisions of the Federal and Illinois Securities Acts. In addition, Ellis asserted that his investment was not handled in a manner suitable to his investment needs or objectives.

Washington Investment specifically denied the allegations of the claim. Washington Investment asserted that it took over the accounts of Adams Securities when it ceased doing business through a "tape transfer" of all open positions into its clearing firm, RPR Clearing Corporation. It was expected that many of the account positions of the customers so transferred would be wired out or "ACATed" to other securities firms. Washington Investment alleged that Ellis' positions were ACATed to Morgan Stanley on December 21, 1992, immediately upon his request. (Emphasis set forth in the answer of Washington Investment). Washington Investment denied that Waldman or Adams were ever employed at Washington Investment.

Washington Investment filed a Motion to Dismiss the Claim on the basis that it had no involvement in the securities transactions in OMNI which Ellis made. The purchases were all made when Ellis did business with Adams Securities and Waldman who was employed by Adams Securities.

Ellis responded to the Motion to Dismiss and replied that the actions of which Ellis was complaining continued to take place while Ellis' account was with Washington Investment. On this basis Ellis requested that the Motion to Dismiss be denied.

#### RELIEF REQUESTED

Ellis requested all compensatory damages for losses which were in excess of \$37,000.00, interest at the legal rate, forum fees, costs, reasonable attorney's fees and punitive damages.

Washington Securities Corp. requested dismissal of the claim.

Adams Securities, Adams and Waldman did not file answers to the Statement of Claim with affirmative relief requests for the panel to consider.

#### OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the panel determined that Respondent, Waldman had been properly served with the Statement of Claim pursuant to Section 25 of the Code of Arbitration Procedure (the "Code"). The panel also determined that Waldman had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed in his absence pursuant to Section 29 of the Code.

Since, respondents, Waldman and Adams Securities did not file with the NASD Answers to the Claim or properly executed Submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the Code, they are bound by the determination of the panel on all issues submitted.

Respondent, Adams filed for bankruptcy and was removed as a party to this proceeding pursuant to the bankruptcy law.

The panel of arbitrators ruled, prior to hearing without any oral argument, to deny the Motion to Dismiss filed by Washington Investment.

The parties who appeared at the hearing have agreed that the Award in this matter may be executed by 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.

#### 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. The claims asserted against Waldman, Adams Securities and Washington Investment Corp. by Ellis shall be and are hereby denied and dismissed in their entirety; and
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

#### FORUM FEES

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by Ellis. Additional Forum Fees in the amount of \$400.00 are assessed against Washington Investment. Forum Fees were calculated at the rate of \$400.00 per hearing session for two (2) hearing sessions.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

#### CONCURRING ARBITRATORS

November 23, 1993  
Dated

/S/ Glenn Seidenfeld  
Glenn Seidenfeld, Esq.  
Presiding Chairperson  
Public Arbitrator

October 26, 1993  
Dated

/S/ Phillip P. Rummell  
Phillip P. Rummell, Esq.  
Panelist  
Public Arbitrator

October 25, 1993  
Dated

/S/ Larry O. Stephens  
Larry O. Stephens  
Panelist  
Industry Arbitrator

Date Award Served on the Parties by the NASD: November 23, 1993