

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

C.F. Moseley & Clara D. Moseley Trust for  
Ada Moseley Jeffries, Mercantile Bank of  
Kansas City, successor

93-01885

Name of Respondent

Randy Burch

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 11, 1993, Claimants C.F. Moseley & Clara D. Moseley Trust for Ada and Mercantile Bank of Kansas City, Trustee by and through James H. Slocomb alleged that on January 29, 1993 they instructed Respondent Randy Burch of Birchtree Financial Services, Inc. both by letter and telephone, that \$50,000 Kansas City Kansas Mortgage Revenue Bonds 7.55% due December 1, 2010 held by Birchtree Financial Services, Inc. had to be delivered to DTC. Claimants further alleged that instead of properly following their instructions to deliver this Bond free, it was sold without their authorization, at which time, Claimants informed Respondent of this error on February 10, 1993, when they discovered that the Bond had been sold at par instead of delivered to DTC as instructed. Claimants contended that since they had previously sold this Bond at 102.08 through another broker, Respondent's unauthorized sale made it impossible to make good delivery on their prior sale and the difference in price was \$1,450.56, whereby the Bond would have to be bought back to make delivery on Claimants' sale. Claimants further contended that their records indicated that they requested by a letter dated October 28, 1991 that Respondent deliver this Bond to DTC, however, this was never accomplished. Claimants asserted that the expense to their customer of Respondent selling this Bond without their proper authorization is \$1,450.56 plus all costs incurred to "back in" the bond, in addition to the expense of lost interest, thus, Respondent should be held liable for their losses.

Respondent Randy Burch, who appeared Pro Se, maintained that he is President and Owner of Birchtree Financial Services, Inc. a general securities broker/dealer with it's main office in

Kansas City in which Birchtree holds no funds or securities for it's customers, but introduces all transactions through it's clearing firm, RPR Clearing Services ("RPR") which is located in St. Louis, MO. Respondent further maintained that RPR executes all transactions for Birchtree and holds all funds and securities for Birchtree's customers, as well as delivering all confirmations of transactions, monthly statements to Birchtree's customers directly with copies to Birchtree. Respondent contended that on January 29, 1993 Ms. Brandi Bengert and Respondent were on the central order desk for Birchtree at which time, Ms. Bengert received a call on the administrative line from Lisa Strickland of Mercantile Bank Trust Department indicating that the Bank would like to sell the 50,000 bonds that were held in the account whereby Ms. Bengert put Ms. Strickland on the speaker phone while she looked into the account on the computer to verify that the account was long such bonds. Respondent further contended that Ms. Strickland was advised that the bonds were in the account and could be sold for the account. Ms. Bengert then put her on hold and called the fixed income desk at RPR at which time, Ms. Bengert got a quote for Ms. Strickland and with all three parties on the line, Ms. Bengert was then directed to sell the 50,000 bonds in the account, whereby verbal confirmation was given to Ms. Strickland that the bonds were sold. Respondent asserted at this time an order ticket was written by Ms. Bengert whereby Ms. Strickland was advised to fax Birchtree authorization for such sale for the firm's records at which time, upon receipt of the faxed letter from Mercantile, Ms. Bengert contacted Ms. Strickland to advise her that the bond had been sold at the market price, and that the settlement date was 2/5/93 rather than the 2/1/93 date indicated in the letter from the bank. Respondent further asserted that at no time in either of the two telephone conversations when Ms. Strickland was advised that the bonds were sold, did she indicate that such bonds should not be sold through Birchtree and in effect Birchtree gave her two verbal indications that the order to sell the bonds through Birchtree had been accepted and executed. Respondent further maintained that on February 8, 1993, after settlement date, Respondent received a call from Ms. Linda Stillwell at Mercantile Bank, indicating that the bonds should not have been sold because they had previously been sold through another broker/dealer, at which time, Respondent advised Ms. Stillwell that Birchtree had taken a verbal order in good faith. Respondent further contended that he denies that the bonds in question were sold without proper authorization and since he became aware that Claimants had in effect sold the bonds twice, he stopped payment on the bonds and started attempting to bust the trade through RPR Clearing, at which time Claimants advised him to send the proceeds of the sale to them whereby based on this request, the credit balance for the sale of the bonds in question was sent out to the Bank and since that time Respondent, RPR Clearing as well as the other broker/dealer have been searching for replacement bonds to cover the short position Claimants created.

**RELIEF REQUESTED**

Claimants C.F. Moseley & Clara D. Moseley Trust for Ada Moseley Jeffries and Mercantile Bank of Kansas City, Trustee requested the replacement of bonds sold, plus \$1,450.56 in actual damages together with interest lost from February 1, 1993 plus the amount of \$800.00 in costs of preparation including attorney's fees and reimbursement of the NASD filing fee.

Respondent Randy Burch, President of Birchtree Financial Services, Inc. denied the claim but offered settlement of \$2,000.00 in order to resolve the matter.

**AWARD**

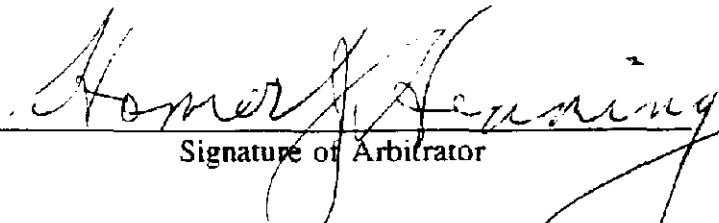
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Homer Henning, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 10, 1993 and by the Respondent on July 15, 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. Respondent Randy Burch is liable and shall pay to the Claimants C.F. & Clara D. Moseley Trust for Ada Moseley Jeffries, Mercantile Bank of Kansas City, successor the sum of \$2,000.00 in damages.
2. The Claimants' request for interest is denied.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. The Respondent is liable and shall pay to the Claimants the sum of \$25.00, as partial reimbursement.

**AFFIRMATION**

I, **HOMER HENNING**, 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.

  
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Signature of Arbitrator

DATE OF DECISION: November 10, 1993