

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Peter Nawrocki
Eugene and Joan Nawrocki
Gregory S. Jezard
Paul J. Hobaica

vs.

Case #
93-03517

Name of Respondents

Bailey, Martin & Appel Inc
Financial Equities Resources, Inc.
Mark F. Perron
Howard Miller Appel

REPRESENTATION

For Claimants, Peter Nawrocki, Eugene and Joan Nawrocki, Gregory S. Jezard, and Paul J. Hobaica, (collectively "Claimants"), Philip Giordano, Esq. formerly with the law firm of Ricklefs & Giordano, P.C., and now with Giordano & Champa, P.A., located in Boston Massachusetts.

For Respondent, Mark Perron ("Perron"), Michael V. Morisi, Esq., from the law firm of Morisi & Associates, located in Braintree, Massachusetts.

For Respondent, Howard Miller Appel ("Appel"), Daniel Dugan, Esq., from the law firm of Spector Gadon & Rosen, P.C., located in Philadelphia, Pennsylvania.

Financial Equities Resources, Inc. ("FER") did not appear at the hearing.

Bailey, Martin & Appel Inc. ("BMA") did not appear at the hearing.

CASE INFORMATION

Joint Statement of Claim was filed on September 7, 1993.

Claimants' executed Submission Agreements as follows: Peter Nawrocki on August 5, 1993; Eugene and Joan Nawrocki on August 3, 1993; Gregory S. Jezard on August 6, 1993; and Paul J. Hobaica on August 2, 1993.

Statement of Answer was filed by Respondent Appel on September 16, 1994.
Respondent Appel did not execute a Submission Agreement. (See Page 4 - Other Issues Considered and Decided.)

Statement of Answer was filed by Respondent Perron on November 4, 1993.
Respondent Perron's Submission Agreement was signed on September 22, 1993.

Respondent FER did not file a Statement of Answer or execute a Submission Agreement. (See Page 4 - Other Issues Considered and Decided.)

Respondent BMA did not file a Statement of Answer or execute a Submission Agreement. (See Page 4 - Other Issues Considered and Decided.)

HEARING INFORMATION

Hearing Dates/Sessions:	September 20, 1994	-	2 sessions
	September 21, 1994	-	2 sessions
	October 19, 1994	-	2 sessions
	November 1, 1994	-	2 sessions
	November 2, 1994	-	2 sessions
	November 9, 1994	-	2 sessions

Hearing Location: NASD offices located in Boston, Massachusetts.

CASE SUMMARY

Claimants allege that Perron, Appel, BMA, and FER, committed violations of federal and state laws, breach of contracts, breach of fiduciary duty, fraud and deceit, failure to supervise, failure to exercise reasonable care and fair practice, and negligent misrepresentation.

Claimants allege that Perron was aware of Claimants' inexperience with securities in investments. Claimants allege that Perron contacted Claimants all of 1989 through the winter 1990 to tout his position at BMA and to discuss an investment in the Longwood Group ("Longwood") which was about to "go public". Claimants Hobaica and Jezard allege that based on Perron's representation that they could earn thirty percent on their investment, that they both invested \$3,500 and \$3,350, respectively. Claimant Jezard further alleges that he informed Perron that his investment represented a large portion of his savings to which Perron answered that Longwood was a "great stock" and would earn thirty percent in a short time. Similarly, Claimant Peter Nawrocki alleges that he invested \$1,600 with Perron and FER based on

Perron's representations that Nawrocki could triple his money in 3 to 6 weeks, that Perron himself had invested most of his income in Longwood, and that Longwood could be purchased at a discount. Further, Claimants Eugene and Joan Nawrocki allege that Perron enticed them into transferring their IRA, valued at approximately \$7,000.00, to BMA and purchasing Longwood to "earn back the losses they had incurred on their current IRA investments".

Claimants allege that Perron was unreachable to discuss the status of their investments, that they did not receive account statements, and that Hobaica never received a confirmation. Further, Eugene & Joan Nawrocki allege that Perron made unauthorized trade in their account. Claimants further allege that as the months went by Perron constantly reassured Claimants that the stock was "doing well" and a large, respected bond underwriter was helping with Longwood's financing.

The Nawrockis allege that in April of 1991, they became aware that their accounts were transferred to Steve/Jim Harrington at Norcross, that Perron had left Norcross twelve to eighteen months earlier, and that he was "currently de-registered". Claimant Peter Nawrocki states that Perron explained there had been a "paper snafu" and that he was still authorized to trade stocks and would be registered again. Claimants allege that Perron failed to disclose that BMA had been permanently barred from the NASD.

Claimant Jezard alleges that upon recommendation of a friend, he contacted the Harringtons about his investment in Longwood and has never received the requested documentation, i.e., prospectuses confirmation and account statements. Similarly, Claimant Hobaica allege that he never received documents from Perron or the Harringtons.

Claimants allege that Respondents breached their fiduciary duty and duty of reasonable care and fair practice to Claimants by investing their savings in high-risk, speculative securities which were inconsistent with Claimants' experience and investment objectives of capital growth appreciation. Claimants further allege that Respondents breached the standards of due care and fair practice by failing to disclose that BMA had an interest in Longwood. Claimants allege that the principals of BMA were the principal market-makers in Longwood. Further, Claimants allege that Martin of BMA served as Longwood's CEO and Chairperson. Claimants further allege that Respondents breached their duty by failing to inform Claimants of a 1-to-3 reverse stock split and the change in Longwood's name to DRS Industries.

Claimants allege that BMA, FER and Appel as control persons of Perron are jointly & severally liable with and to the same extent as Perron. Claimants further allege that the actions of Respondents constituted fraud and deceit. Claimants allege that Respondents breached their duty to provide Claimants with good faith, competent investment advice which resulted in unjust enrichment of the Respondents. Claimants allege that Respondents made untrue statements of material fact or omitted selling securities which violated the Securities Exchange Act and state securities laws.

Respondent Perron maintains that none of the Claimants informed Perron that they did not have significant experience with investing in securities. Perron maintains that Peter Nawrocki bragged about his investment prowess and Hobaica bragged about investments purchased through other brokers.

Perron also maintains that he never contacted Claimants, that he never urged claimants to invest in Longwood, and that he never promised Claimants that they could earn thirty percent on the Longwood investment. Perron further maintains that despite his enthusiasm, he warned Claimants about the potential risk of Longwood. Perron further maintains that he did not represent that Longwood was about to go public because Longwood was already a publicly traded company. Perron denies that he engaged in any unauthorized trading in the Nawrockis' account. Perron maintains that he was a registered representative with BMA and Cenpac until December 1991 when he left the investment business and Claimants were aware of his status.

Perron denies the allegations of wrongdoing asserted by Claimants. Perron asserts several affirmative defenses as well as equitable defenses. Perron lastly asserts that Claimants engaged in similar investment activities prior to meeting Perron.

Respondent Appel denies all allegations of wrongdoing and asserts several affirmative defenses. Appel argues that he is not a control person within the statutory definition, that Claimants' claims are barred by the applicable statute of frauds and the statute of limitations, and that no private right of action exists under NYSE or NASD rules.

RELIEF REQUESTED

Claimants request an award of \$26,000.00 in compensatory damages, treble damages, costs, reasonable attorney's fees and punitive damages and any other damages determined by the arbitrators.

Respondents request that all claims asserted by Claimants be denied.

OTHER ISSUES CONSIDERED & DECIDED

The parties who were present at the hearings have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the original remain on file with the NASD.

As stated earlier, Respondents FER, BMA and Appel did execute Submission Agreements. After reviewing the NASD records, the arbitrators determined that said Respondents were members of the NASD during the time of the alleged wrongdoing and are required to submit to

arbitration pursuant to Section 12(a) of the *Code of Arbitration Procedure ("Code")*. With respect to Respondents BMA and FER who did not appear at the hearing, the arbitrators determined that said Respondents were notified of the hearing pursuant to Section 25 of the *Code* and proceeded with the hearing in their absence, pursuant to Section 29 of the *Code*.

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:

There is a typographical error in the Statement of Claim; Count 7 should have been labelled Count 6 and the remaining counts in sequence. The award reflects the re-numbering.

1. The claims asserted under Count 1 are denied as they are timed barred as to all Respondents.
2. The claims asserted under Count 5 are denied as there is no liability on the part of any of the Respondents.
3. As to Counts 2, 4, 6, 8 and 9, all of the Respondents are jointly and severally liable.
4. As to Count 3, Howard Appel, BMA and FER are jointly and severally liable.
5. As to Count 7, Breach of Contract, Perron, BMA and FER are jointly and severally liable.
6. As to Count 10, Breach of Duty to Supervise, BMA and FER are jointly and severally liable.
7. As set forth in items 3, 4, 5 and 6 above, Respondents are jointly and severally liable to Claimants in the amount of *EIGHT THOUSAND SEVEN HUNDRED AND NINETY ONE DOLLARS AND ZERO CENTS* (\$8,791.00) and shall pay Claimants as follows:
 - a. Eugene Nawrocki - \$2,631.00
 - b. Joan Nawrocki - \$2,631.00
 - c. Peter Nawrocki - \$584.00
 - d. Gregory S. Jezard - \$1,435.00
 - e. Paul Hobaica - \$1,510.00
8. Claimants' requests for attorney's fees, interest and costs are denied.

9. Further, the arbitrators find that the four Respondents: (1) willfully and fraudulently misled the Claimants regarding the value of the Longwood shares at the time of purchase; (2) wilfully and fraudulently misrepresented to the Claimants at the time of purchase that Longwood was the owner and developer of the real estate at the White Horse project; and, (3) wilfully and fraudulently failed to disclose to the Claimants at the time of purchase that BMA, Howard Appel, Frank Martin and Donald Bailey were the principal owners of Longwood and, therefore, award punitive damages to all Claimants pursuant to the common law causes of action stated in the Statement of Claim to be recovered as follows:
- a. Mark Perron is liable and shall pay each Claimant *ONE THOUSAND DOLLARS AND ZERO CENTS* (\$1,000.00).
 - b. Howard Appel is liable and shall pay each Claimant *THREE THOUSAND DOLLARS AND ZERO CENTS* (\$3,000.00).
 - c. BMA and FER are jointly and severally liable and shall pay each Claimant a total of *FIVE THOUSAND DOLLARS AND ZERO CENTS* (\$5,000.00).

FORUM FEES

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed.

Non-refundable filing fee: \$100.00

Hearing Sessions Fees: \$4,800.00 (12 hearing sessions x \$400.00 per session)

Total Fees: \$4,900.00

The undersigned arbitrators have determined that Claimants are responsible for one third (1/3) the cost of arbitration and Respondents are responsible for two-thirds (2/3) of the cost.

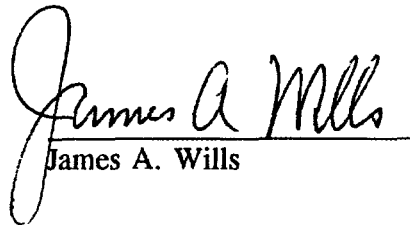
- 1. Claimants are jointly and severally assessed \$1,633.33. Claimants previously paid \$500.00 and owe a balance of \$1,133.33.
- 2. Respondents are jointly and severally assessed \$3,266.67 in forum fees.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Paul W. Fager, Esq.	-	Public Chairperson
Bennett Fisch	-	Public Panelist
James A. Wills	-	Industry Panelist

Concurring Arbitrator's Signature


James A. Wills

Date of Decision: January 11, 1995

ARBITRATION PANEL

Paul W. Fager, Esq.	-	Public Chairperson
Bennett Fisch	-	Public Panelist
James A. Wills	-	Industry Panelist

Concurring Arbitrator's Signature

Paul W. Fager
Paul W. Fager, Esq.

Date of Decision: January 11, 1995

ARBITRATION PANEL

Paul W. Fager, Esq.	-	Public Chairperson
Bennett Fisch	-	Public Panelist
James A. Wills	-	Industry Panelist

Concurring Arbitrator's Signature


Bennett Fisch

Date of Decision: January 11, 1995