

**NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

In the Matter of the Arbitration Between

Scottsdale Securities, Inc.

and

Russell C. & Dinah D. Pike

NASD Case Number 93-04104

and

Allen Sorey

---

**REPRESENTATION OF PARTIES**

Claimant, Scottsdale Securities, Inc., and Third-Party Respondent, Allen Sorey, were represented by John C. Garavaglia, Esq. of Raskas, Ruthmeyer, Pomerantz, Wynne, Garavaglia & Susman, St. Louis, MO.

Respondents, Russell C. and Dinah D. Pike, were Pro Se.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 6, 1993. The Submission Agreement of Claimant Scottsdale Securities, Inc. was signed on September 29, 1993 by Rodger O Riney.

The Statement of Answer, Counter-Claim and Third-Party Claim was filed by Respondents, Russell C. and Dinah D. Pike, on or about December 2, 1993. The Submission Agreement of Respondents, Russell C. and Dinah D. Pike was signed on November 29, 1993.

The Reply to the Counter-Claim submitted by Scottsdale Securities, Inc. was filed on or about February 11, 1994.

The Answer to the Third-Party Claim submitted by Allen Sorey was filed on or about February 11, 1994.

### HEARING INFORMATION

A pre-hearing conference was held on December 9, 1994 by telephone conference call before one arbitrator for a total of one (1) pre-hearing session. Another pre-hearing conference was held on January 16, 1995 by telephone conference call before three arbitrators for a total of one (1) hearing session.

The hearing was held on January 23, 1995 before three arbitrators in St. Louis, MO for a total of one (1) hearing session.

### CASE SUMMARY

Claimant, Scottsdale Securities, Inc. ("Scottsdale") alleged that the Respondents, Russell C. Pike and Dinah D. Pike ("Pike") had an unsecured debit in their account after purchasing several call options through Allen Sorey ("Sorey"), branch manager, in Scottsdale Securities's Springfield, MO office on July 15 and 16, 1993. As alleged, Pike gave Sorey on July 15, 1993 a check in the amount of \$61,000.00 to cover the July 15th purchases. Upon receipt of the check on July 16, 1993 in the home office of Scottsdale in St. Louis, Rodger Riney ("Riney"), president of Scottsdale, after realizing the options had expired, allegedly advised Sorey to have Pike wire money immediately to cover all the purchases and to tell Pike that Scottsdale would not deposit the Claimants' check. On July 16, 1993, Pike allegedly promised to wire \$88,421.20 to Scottsdale that afternoon yet, at the close of the market, called Sorey saying that he was on his way to the bank and requesting that all the July expiring options be sold for the best current price. Since the Pikes did not wire the funds on July 16, 1993, Scottsdale deposited their check on July 19, 1993. Sorey reached Russell C. Pike by telephone on July 21, 1993 and was told that Dinah D. Pike stopped payment on the check and that the funds were never wired. In addition, Pike allegedly said that he needed two or three weeks to arrange payment and that he would sign a promissory note. Pike signed a \$66,000.00 promissory note for the approximate debit balance. On August 16, 1993, the due date for the first payment under the note, Scottsdale claimed that Pike asked for an extension to which Scottsdale agreed yet informed Pike that there would be no future extensions allowed. Scottsdale asserted that the Pikes have not made any payments on the note and, therefore, asked to be awarded damages.

In their Statement of Answer, Counter-Claim and Third-Party Claim, Respondents, Russell C. Pike and Dinah D. Pike, admitted that they gave Sorey a \$61,000.00 check and had the conversations regarding the wire transfer yet asserted that the purchases were made at the recommendation, advise misrepresentations and omissions of Allen Sorey with whom they had placed their trust and confidence regarding their account transactions. The Pikes contended that Sorey failed to determine or properly evaluate the Pikes' suitability as investors for options. As alleged, the Pikes advised Sorey that their primary objectives were growth and trading. The Pikes claimed that since the opening of their account in February, 1993 over \$150,000.00 of their

investments have been applied by Sorey and Scottsdale for losses and commissions. The Pikes made specific allegations against Scottsdale Securities, Inc. and Allen Sorey including, but, not limited to, negligence, breach of contract, breach of fiduciary duty, churning, failure to advise and violations of the Securities Exchange Act Sections 10(b) and Rule 10(b)5 and the Securities Act of 1933.

Scottsdale Securities, Inc., in its reply to the Counter-Claim, and Allen Sorey, in his Response to the Third-Party Claim, denied all allegations of wrongdoing and asserting several affirmative defenses including, but, not limited to, waiver, laches, estoppel, failure to state a claim upon which relief may be granted, failure to particularize the allegations of the alleged relevant facts as required by Section 25(a) of the NASD Code of Arbitration Procedure, the Pikes' own negligence caused or directly contributed to cause any loss incurred by the Pikes, and Scottsdale acted in good faith and did not directly or indirectly induce the act or acts which the Pikes allege constitute the Pikes' alleged cause of action.

#### **RELIEF REQUESTED**

Claimant Scottsdale Securities, Inc. requested an award in the amount of \$66,907.22 in actual damages plus 10% interest from July 16, 1993, costs of arbitration and attorneys' fees.

Respondents Russell C. and Dinah D. Pike requested that the claims asserted against it be denied in its entirety, that the promissory note in the amount of \$66,000.00 be found void and unenforceable and damages in excess of \$150,000.00, interest, attorneys' fees and costs.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Russell C. and Dinah D. Pike failed to appear by telephone for the pre-hearing conference on December 9, 1994 and failed to appear in-person at the hearing scheduled to begin on January 23, 1995. Upon review of the file and the representations made by the Claimant, the undersigned arbitrators have determined that Respondents Russell C. and Dinah D. Pike have been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents Russell C. Pike and Dinah D. Pike had received due notice of the hearing and pre-hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code. Russell C. Pike did appear on behalf of the Respondents for the pre-hearing conference by telephone conference call on January 16, 1995.

Third-Party Respondent Allen Sorey did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

After reviewing Scottsdale Securities, Inc.'s Motion for Sanctions and related documents and hearing oral arguments on the motion during the pre-hearing conference, the undersigned arbitrators ordered on January 19, 1995 that the Respondents', Russell C. and Dinah D. Pike, Counter-Claim and Third-party Claim be dismissed without prejudice.

The party present at the hearing agreed that the Award in this matter may be executed in counterpart copies may be entered and 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 Respondents, Russell C. Pike and Dinah D. Pike, are jointly and severally liable for and shall pay to the Claimant, Scottsdale Securities, Inc., the sum of \$66,907.22 in actual damages;
2. The Respondents, Russell C. Pike and Dinah D. Pike, are jointly and severally liable for and shall pay to the Claimant, Scottsdale Securities, Inc., the sum of \$16,057.76 in interest;
3. The Respondents, Russell C. Pike and Dinah D. Pike, are jointly and severally liable for and shall pay to the Claimant, Scottsdale Securities, Inc., the amount of \$14,000.00 for attorneys' fees. In determining to award attorneys' fees, the panel considered the case law and statutory authority cited by the parties in their pleadings as well as the arguments of the Claimant at the hearing and determined that authority existed for an award of attorneys' fees to the Claimant; and
4. Any and all costs or fees not expressly enumerated herein shall be borne by the party incurring the cost.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session plus at the rate of \$300.00 per pre-hearing session before one arbitrator. There were two (2) hearing sessions x \$750.00 plus one (1) pre-hearing session x \$300.00 totaling \$1,800.00 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimant. Respondents, Russell C. Pike and Dinah D. Pike, is liable for and shall pay to the Claimant, Scottsdale Securities, Inc., the sum of \$1,100.00 as reimbursement. Respondents, Russell C. Pike and Dinah D. Pike, are liable for and shall pay to the NASD the amount of \$1,200.00 in additional forum fees.

The NASD shall retain postponement fees in the amount of \$750.00 previously deposited with the NASD by the Respondents.

**Fees are payable to the National Association of Securities Dealers, Inc.**

Leah M. Balk, Esq.  
Leah M. Balk, Esq.  
Public Arbitrator, Presiding Chair

William M. Holland  
William M. Holland  
Public Arbitrator

Gary C. Liddicoat, Esq.  
Gary C. Liddicoat, Esq.  
Industry Arbitrator

Date of decision: March 21, 1995