

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Patricia C. Wood

93-04319

**Name of Respondents**

Barrett Day Securities, Inc., and  
Damon Hewlette

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**REPRESENTATION OF PARTIES**

Claimant Patricia C. Wood ("Wood") was represented at the hearing by Christopher Q. King, Esq. of Sonnenschein, Nath & Rosenthal, Chicago, Illinois.

Respondent Barrett Day Securities, Inc. ("Barrett") was represented at the hearing by Ruthann G. Niosi, Esq., of New York, New York.

Respondent Damon Hewlette ("Hewlette") appeared at the hearing Pro Se.

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimant Wood on October 18, 1993. The Uniform Submission Agreement was signed by Wood on October 15, 1993.

The Statement of Answer was filed by Respondent Barrett Day on March 7, 1994. The Uniform Submission Agreement was signed by David Berger, President on behalf of Barrett Day on March 21, 1994.

The Uniform Submission Agreement was signed by Respondent Hewlette on March 21, 1994.

**HEARING INFORMATION**

A pre-hearing conference was held on August 29, 1994 for one (1) session.

The hearing was held on September 28, 1994 for two (2) sessions and on September 29, 1994 for one (1) session in Chicago, Illinois for a total of three (3) hearing sessions.

### CASE SUMMARY

Claimant Wood stated in her Statement of Claim that during 1992, Respondent Hewlette solicited the purchase of Performance Nutrition, Remington Financial Group, Inc. ("Remington"), and Sphinx Natural Resources, Inc. ("Sphinx") shares based on false and misleading representations. Wood also alleged that the Sphinx transaction was made contrary to the provisions of Rule 146 under the Securities Act of 1933 ("the Securities Act"), was made in violation of §12(1) of the Securities Act, and that Respondents failed to disclose that the seller of the Sphinx shares, Charles Bazarian, was a convicted felon with ties to Performance Nutrition, Remington, and Sphinx. Wood further alleged that Barrett Day charged an excessive markup on her purchase of PanWorld Minerals International, Inc. shares, and that it manipulated the price of those shares in violation of §9 of the Securities and Exchange Act of 1934 ("the Exchange Act"). Wood also alleged that Barrett Day failed to execute a limit order to purchase Calgene shares. Wood alleged that the actions of Respondents constituted: fraud in violation of §10(b) of the Exchange Act and Rule 10b-5 thereunder, and §18 of the NASD Rules of Fair Practice; common law fraud; and breach of fiduciary duty. Additionally, Wood alleged that Hewlette breached a settlement agreement relating to the above allegations.

Claimant Wood alleged that Respondent Barrett Day breached its statutory duty under §15b(5)E of the Exchange Act, and Article III §27 of the NASD Rules of Fair Practice by failing to properly supervise Respondent Hewlette, and that Barrett Day is liable for Hewlette's actions under §20 of the Exchange Act and §15 of the Securities Act.

Respondent Barrett Day in their Answer denied each and every substantive allegation contained in the Claim. Respondent Barrett Day set forth the following affirmative defenses in their Answer: Claimant's demand for damages is improper as a matter of law and without foundation in fact; Claimant's failure to state a claim upon which relief may be granted; Claimant's failure to state any damages against Barrett Day for which relief can be granted; Claimant was a knowledgeable investor who understood the risks inherent in the investments made by her, which risks she voluntarily assumed; Barrett Day acted in good faith, did not directly or indirectly induce any violations of the common law, SEC, NASD, or NYSE, and had no knowledge of any violations; Claimant failed to mitigate all of her damages; Claimant's losses were not proximately caused by the alleged misconduct of Respondents, but were proximately caused by her own conduct or negligence; Claimant did not rely on the alleged misrepresentations; the Claimant's claims are barred by the doctrines of estoppel, laches, ratification and waiver; Claimant's alleged damages were caused or contributed to by persons, conditions or events beyond Barrett Day's control; and Barrett Day had in place supervisory procedures that were followed. Additionally, Barrett Day denied the existence of any settlement agreement between Hewlette and Wood, and stated that Wood had negotiated a settlement with Bazarian in satisfaction of any claims regarding the Performance Nutrition, Remington and Sphinx investments.

Respondent Hewlette did not file an answer to these allegations.

**RELIEF REQUESTED**

Claimant requested damages plus interest, reasonable attorney fees, and exemplary damages.

Respondent Barrett Day requested that the Statement of Claim be dismissed against them in its entirety; that should the panel find against any of the Respondents, the award not be joint and several; and that Barrett Day be awarded their costs.

Respondent Hewlette did not state a relief.

**OTHER ISSUES CONSIDERED AND DECIDED**

Prior to the hearing, Claimant Wood withdrew her claim relating to the sale of unregistered shares of Sphinx, including the allegations that the sale was made without reliance on the safe harbor provisions of Rule 146 under the Securities Act of 1933 ("the Securities Act"), and that the sale violated §12(1) of the Securities Act.

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original(s) 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 Statement of Claim filed by Claimant, Patricia C. Wood, is denied and dismissed in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred other than those specifically enumerated for herein.

**FORUM FEES**

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 pre-hearing session x \$300 = \$ 300  
3 hearing sessions x \$750 = \$2,250

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200, and the hearing session deposit in the amount of \$750 previously paid to the

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NASD by Claimant.

The panel has ordered that additional forum fees in the amount of \$1,800 shall be paid by Respondent Barrett Day Securities, Inc.

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

**By The Arbitration Panel:**

Dated:

11/22/94

s/s Alan S. Farnell, Esq.  
Alan S. Farnell, Esq., Presiding  
Public Arbitrator

11/18/94

s/s Kenneth N. Adamson, Esq.  
Kenneth N. Adamson, Esq.  
Public Arbitrator

11/14/94

s/s Denis A. Dunne  
Denis A. Dunne  
Industry Arbitrator

(For NASD use only)

Date Award Served By The NASD: 12/5/94.