

## N.A.S.D. AWARD

### NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

RAS Securities Corp.; Thomas James Associates, Inc.;  
Neidiger, Tucker, Bruner, Inc.; Sands Brothers & Company, Ltd.;  
World Securities Corporation; and Laffer Warren & Co., Inc.

and

94-00080

Name of Respondent

Walford & Company, Incorporated

### REPRESENTATION OF PARTIES

RAS Securities Corp. ("RAS"); Thomas James Associates, Inc. ("Thomas James"); Neidiger, Tucker, Bruner, Inc. ("Neidiger"); Sands Brothers & Company, Ltd. ("Sands"); World Securities Corporation ("World"); and Laffer Warren & Co., Inc. ("Laffer") (collectively as "Claimants") were represented by James E. Nesland, Esq. of Ireland, Stapleton, Pryor & Pascoe, Denver, Colorado. Neidiger was represented by Frank W. Visciano, Esq. of Senn, Lewis, Visciano & Strahle, Denver, Colorado. World was represented at the hearing by Sandy Solomon of World Securities Corporation.

Walford & Company, Incorporated ("Respondent") was represented by Stuart N. Bennett, Esq. of Krendl, Jorowitz & Krendl, Denver, Colorado.

### CASE INFORMATION

The Statement of Claim was filed on or about January 6, 1994. Amended Statement of Claim was filed on or about January 11, 1994. Response of Claimants RAS Securities Corp.; Thomas James Associates, Inc.; Sands Brothers & Company, Ltd.; World Securities Corporation; and Laffer Warren & Co., Inc. to Respondent Walford & Company, Incorporated's Statement of Claim was filed on or about January 12, 1994. Neidiger, Tucker, Bruner, Inc.'s Responses to Statement of Claim filed by Walford & Company, Incorporated and RAS Securities Corp. was filed on or about January 13, 1994. Submission Agreement of Claimant RAS Securities Corp. was signed on January 5, 1994 by Robert A. Schneider. Submission Agreement of Claimant Thomas James Associates, Inc. was signed on January 10, 1994 by James A. Villa. Submission Agreement of Claimant Neidiger, Tucker, Bruner, Inc. was signed on January 10, 1994 by Charles C. Bruner. Submission Agreement of Claimant Sands Brothers & Company, Ltd. was signed on January 11, 1994 by Steven Sands. Submission Agreement of Claimant World

Securities Corporation was signed on January 10, 1994 by Sandy Solomon Venezia. Submission Agreement of Claimant Laffer Warren & Co., Inc. was signed on January 10, 1994 by Roy G. Warren.

Statement of Answer and Statement of Claim was filed by Respondent on or about January 11, 1994.

### **HEARING INFORMATION**

The hearing was held on Thursday, January 13, 1994 for two (2) session, Friday, January 14, 1994 for two (2) sessions, Saturday, January 15, 1994 for two (2) sessions, and Sunday, January 16, 1994 for one (1) session in Denver, Colorado for a total of seven (7) sessions.

### **CASE SUMMARY**

Claimant alleged that Walford transmitted a letter via facsimile to members of the Underwriting Group for the U.S. Wireless Data, Inc. offering which indicated that Walford would deliver to all members of the Underwriting Group their pro rata shares of the 644,500 shares which remain unsold as a result of cancellations received by Walford in retail and COD sales to its customers. Claimants alleged that members of the Underwriting Group refused to accept delivery of the shares because:

- \* the factual situation represented in Walford's December 15 facsimile is inaccurate, and in addition that Walford & Company Incorporated represented to the Underwrites on several occasions verbally and in writing, that the transaction was 'all sold', and
- \* the cited provisions of the Agreements among Underwriters are in appropriate to apply to such factual situations.

Claimants further alleged that Walford then commenced a lawsuit in the District Court, County of Boulder, State of Colorado against all members of the Underwriting Group.

Respondent Walford admitted sending the facsimile but denied that the unsold shares at that time were a result of cancellations only, and stated that the unsold shares were Walford's best estimate at the time of cancellations and unpaid for shares that had been reserved from the shares underwritten by the other underwriters. Walford also stated that the refusal of the other underwriters constitutes a breach of their obligations under the Underwriting Agreement and the Agreement Among Underwriters.

Claimant Neidiger in its separate Answer to the claims asserted by Walford stated that it had advised Walford that it would not participate in the U.S. Wireless Data, Inc. underwriting in the event that Walford was the managing underwriter or otherwise responsible for the books and records for the underwriting. Neidiger also advised Walford that Walford was not authorized

to act on its behalf in connection with the U.S. Wireless Data, Inc. underwriting and did not learn that Walford had acted as the managing underwriter, had been responsible for the books and records of the underwriting, and had purported to take action ostensibly on Neidiger's behalf in connection with the underwriting. Neidiger had executed a Power of Attorney in favor of RAS in connection with the underwriting and not Walford.

### **RELIEF REQUESTED**

Claimants in their Amended Statement of Claim requested that the arbitrators enter an award declaring the extent, if any, of their obligation under paragraph 10 of the Agreement Among Underwriters; and award of their legal fees and other costs incurred in this proceeding and such other and further relief as may be deemed just and proper.

Claimant Neidiger in its separate Answer to the claims asserted by Walford requested that the arbitrators: deny Walford's request for relief; joined in the request for relief of the other Claimants; grant it attorney's fees and costs incurred in connection with this arbitration and the related court proceeding.

Walford requested the entry of a preliminary and permanent injunction, enjoining Claimants from dishonoring delivery of their pro rata shares of the unsold shares and requiring them to pay for such shares immediately; entry of judgment compelling specific performance under the Agreement Among Underwriters and an award of consequential damages as may be proved at the hearing; dismissal of all claims asserted against it with prejudice; and an award of costs expenses, expert witness fees, interest and such other relief as the panel deems appropriate.

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

Respondent Walford & Company, Incorporated did not file with the N.A.S.D. a proper executed submission to arbitration but is required to submit to arbitration pursuant to §8 of the N.A.S.D. 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.

This expedited hearing was ordered by the District Court, County of Boulder, State of Colorado.

Pursuant to the agreement of the parties, in an effort to expedite the delivery of the panel's decision in this matter, the panel had consented to the delivery of a summary of its decision to the parties. The following summary was transmitted via facsimile to the parties on Monday, January 17, 1994.

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 undersigned arbitrators find in favor of RAS Securities Corp., Neidiger Tucker Bruner, Inc., World Securities, Inc., Thomas James Associates, Sands Brothers & Co., Ltd., and Laffer Warren & Co. and against Walford & Company, Inc.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.
3. Forum fees are to [be] split between the parties 50% jointly and severally from RAS Securities Corp., Neidiger Tucker Bruner, Inc., World Securities, Inc., Thomas James Associates, Sands Brothers & Co., Ltd., and Laffer Warren & Co and 50% from Walford & Company, Inc.

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with the N.A.S.D.

#### **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 undersigned arbitrators find in favor of RAS Securities Corp., Neidiger Tucker Bruner, Inc., World Securities, Inc., Thomas James Associates, Sands Brothers & Co., Ltd., and Laffer Warren & Co. and against Walford & Company, Inc.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

#### **FORUM FEES**

Pursuant to §44(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") 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 N.A.S.D. on behalf of the Claimants. Claimants shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees. Walford & Company, Incorporated shall pay to the NASD the sum of \$2,500.00 as the expedited hearing fee in addition to the sum of \$250.00 as the non refundable filing fee for the claims asserted in this matter and the sum of \$600.00 as forum fees. Claimants shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees. Respondent Walford shall be and hereby is liable for and shall pay to the NASD a total of \$2,100.00 as forum fees which sum includes the \$600.00 mentioned above but not the expedited hearing charge.

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Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

January 26, 1994

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January 26, 1994

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s/ Albert T.T. Cook, Jr.  
Albert T.T. Cook, Jr.  
Industry Arbitrator

January 26, 1994