

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Prime Investors, Inc.

94-00288

Name of Respondent

Alexander M. MacNicol, III

REPRESENTATION

Claimant Prime Investors, Inc. ("Prime Investors") was represented by Mark D. Murphy, Esq. of Mitchell, Kristl & Lieber, located in Kansas City, Missouri.

Respondent Alexander M. MacNicol, III ("MacNicol") was represented by G. Edwin Proctor, Jr., Esq. of Heavner Jarrett & Kimball, located in Kansas City, Missouri.

CASE INFORMATION

Statement of Claim filed: January 25, 1994.

Claimant's Submission Agreement signed on: January 19, 1994 by Ken Wright, President of Prime Investors, Inc..

Statement of Answer filed by Respondent, Alexander M. MacNicol, III on: March 18, 1994.

Respondent, Alexander M. MacNicol, III's Submission Agreement signed on: March 18, 1994.

HEARING INFORMATION

Hearing Date/Sessions: August 23, 1994 for Two (2) Sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Prime Investors alleged that MacNicol had failed to pay the sums due on a debt incurred by MacNicol's clients pursuant to the terms of a written Sales Agreement which held MacNicol personally liable for these debts. Prime Investors specifically allege:

1. On December 8, 1992 MacNicol signed a Sales Agreement with Prime Investors which provided in part that MacNicol would be held personally liable to Prime Investors for any expenses Prime Investors incurred on MacNicol's behalf; the Agreement became effective on December 28, 1992;
2. On June 2, 1993, MacNicol, after obtaining limited and unsubstantial information over the telephone, opened an account in the name of Paul Dawar. On June 4, 1993, MacNicol, after obtaining limited and unsubstantial information over the telephone, opened an account in the name of Shally Dawar. Trades were thereafter conducted in each account which generated a net loss of \$3,887.86 in Paul Dawar's account and a \$17,065.93 loss in Shally Dawar's account;
3. When demand was made upon the Dawars for recovery of the losses, these persons denied calling MacNicol, establishing an account with Prime Investors, or conducting any trades. A suit subsequently filed in Federal Court by Prime Investors led to a settlement of \$15,000.00 between the Dawars and Prime Investors.
4. After applying the sum paid by the Dawars, Prime Investors suffered a loss of \$10,105.04 including unpaid debt and interest. Pursuant to the Sales Agreement described previously, MacNicol is fully liable for these amounts. Demand was made on MacNicol for total payment of \$10,105.04, but no payment was received.

MacNicol denied owing any sums to Prime Investors, alleging that:

1. Claimant is barred from enforcing a claim against MacNicol since Claimant has fully and completely released all of their claims in this matter by the release and settlement agreement made with the Dawars;
2. MacNicol is an "employee," and not an "independent contractor," of Claimant; as an employee and agent of the Claimant, MacNicol was released from any claim by the release and settlement agreement between Prime Investors, the principle, and the Dawars;
3. All trades, accounts and transactions regarding the Dawars were approved by Prime Investors and Ken Wright, the President of Prime Investors;
4. All current monies owed MacNicol by Prime Investors should offset any

liability on the part of MacNicol, if any liability should be found.

RELIEF REQUESTED

Prime Investors requested entry of an award in its favor against MacNicol in the amount of \$10,105.04, plus interest together with attorney's fees and costs, and damages caused by lost opportunity.

MacNicol requested that the panel completely deny all of the relief sought by Claimant Prime Investors, and that Respondent recover all attorney's fees and costs he incurs in this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

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 remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Alexander M. MacNicol, III is liable for, and shall pay to Claimant, Prime Investors, Inc., the sum of \$4,987.00 for actual, compensatory damages and interest;
2. Respondent, Alexander M. MacNicol, III is liable for, and shall pay to the Claimant, Prime Investors, Inc., the sum of \$2,500.00 for attorney's fees and costs; and
3. Any relief not specifically granted herein, is hereby denied and dismissed with prejudice.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: Two (2) hearing sessions x \$300.00 per session = \$600.00; Total Forum Fees = \$600.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee and the \$300.00 hearing session deposit previously paid by the Claimant.

Additional forum fees in the amount of \$300.00 is assessed against Respondent, Alexander M. MacNicol, III.

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

Concurring Arbitrator Signature

Name

Date

J. Bret Armatas/s/
J. Bret Armatas, Esq.
Industry Arbitrator
Chairperson

September 30, 1994