

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Choice Investments, Inc.**

**94-863**

**Names of Respondent**

**Forde D. McWilliams**

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### **REPRESENTATION**

**Claimant, Choice Investments, Inc. (hereafter "Choice") was represented at the hearing by Mark A. Wright, Esq., of Choice Investments, Inc., Austin, Texas.**

**Respondent Forde D. McWilliams (hereafter "McWilliams") was represented at the hearing by John Dees, Jr., Esq., Dallas, Texas.**

### **CASE INFORMATION**

**The Statement of Claim was filed on March 7, 1994. A Submission Agreement was signed by Choice on March 2, 1994.**

**A Joint Statement of Answer was filed with the NASD by Respondent McWilliams or about April 29, 1994. A Submission Agreement was signed by McWilliams on April 27, 1994.**

### **HEARING INFORMATION**

**The hearing was held on October 26, 1994, for two (2) sessions in Houston, Texas.**

## **CASE SUMMARY**

In the Statement of Claim, Choice alleged that McWilliams, in contravention of an Associate Agreement, failed to indemnify Choice for its payment of a NASD Arbitration Award and costs associated with the Award in which Choice and McWilliams were found jointly and severally liable to a customer.

In the Statement of Answer, Respondent McWilliams alleged, in connection with the separate arbitration, that Choice inadequately defended McWilliams; that Choice and the attorneys hired by Choice failed to properly inform McWilliams of the status of the arbitration; and that Choice and the attorneys hired by Choice failed to inform McWilliams of settlement offers made by the Claimant.

## **RELIEF REQUESTED**

Claimant Choice requested damages in the amount of \$74,480.68 representing the payment by Choice of the arbitration award, legal fees and costs of the separate arbitration.

Respondent McWilliams requested that the Claim be dismissed in its entirety and that McWilliams be awarded costs for defending the Claim.

## **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing, Respondent McWilliams filed a Motion to Dismiss on the basis that Claimant is not entitled to indemnification from McWilliams. The Motion was taken under advisement by the Panel.

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 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. Respondent McWilliams is liable for and shall pay to Claimant Choice the sum of \$14,000.00.
2. Each of the parties shall bear their own costs and expenses incurred, other than those

specifically enumerated for herein.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

The NASD shall retain the claim filing fee of \$500.00 and the hearing session deposit in the amount of \$600 which was previously deposited with the NASD by Claimant Choice.

The Panel has ordered that Claimant Choice and Respondent McWilliams shall each be liable to the NASD for half of the Forum Fees assessed in this matter.

(2) hearing sessions X \$600.00 = \$1,200.00 minus hearing session deposit of \$600.00 = \$600.00 net due. The Panel has ordered that Respondent McWilliams pay additional Forum Fees to the NASD in the amount of \$600.00.

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

### By the Arbitration Panel:

Dated:

/s/ Daniel R. Kirshbaum  
Daniel R. Kirshbaum, Esq.  
Industry Arbitrator  
Chairperson

1/3/95

/s/ Linda Broocks  
Linda Broocks, Esq.  
Industry Arbitrator

12/30/94

/s/ Charles V. Dwyer, Jr.  
Charles V. Dwyer, Jr.  
Industry Arbitrator

12/30/94

Date Award served by the NASD: 1/10/95