

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

William R. Bray

94-00963

Names of Respondent

McDonald & Company Securities, Inc.

REPRESENTATION

Claimant, William R. Bray ("Bray") was represented at the hearing by Mark Briol, Esq., and Gregory L. Wilmes, Esq., of Briol & Wilmes, Minneapolis, Minnesota.

Respondent McDonald & Company Securities, Inc., ("McDonald") was represented at the hearing by Gregory G. Wille, Esq., of Wrenn & Wille, Milwaukee, Wisconsin, and Henry V. Kerr, Esq., of McDonald Company Securities, Inc.

CASE INFORMATION

The Statement of Claim was filed on March 14, 1994. A Submission Agreement was signed by Bray on February 28, 1994.

A Joint Statement of Answer was filed with the NASD by Respondent McDonald on May 6, 1994. A Submission Agreement was signed by McDonald on May 2, 1994.

HEARING INFORMATION

The hearing was held in Milwaukee, Wisconsin on December 20, 1994, for two (2) sessions, and on December 21, 1994 for two (2) sessions, for a total of four (4) sessions.

CASE SUMMARY

Claimant Bray alleged in the Statement of Claim that Respondent McDonald bought 5,300 shares of Railroadmen's Federal from Bray at \$28-5/8 per share while McDonald was in possession of nonpublic inside information concerning Railroadmen's with which McDonald used to conclude that the stock was worth \$41 per share.

McDonald issued a solicited "fairness opinion" on the worth of Railroadmen's stock in anticipation of a merger involving Railroadmen's Federal. Railroadmen's stock did subsequently trade at and around the \$41 per share level.

Claimant Bray further alleged that Respondent McDonald breached a fiduciary duty to Bray; violated Wisconsin and Indiana securities laws; violated federal securities laws pursuant to Sections 10(b) and 15(c)(1) of the Securities Exchange Act and Rules 10b-5, 15c and 14e-3(a) promulgated thereunder; committed common law fraud; violated NASD Rules of Fair Dealing and Fair Pricing; and committed general negligence and negligence per se.

In its Answer, Respondent McDonald denied each and every allegation in the Statement of Claim. McDonald further alleged that the Investment Banking and the Research, Trading, and Retail Departments must often maintain a "Chinese Wall" between each other so that brokers can conduct business without possession of material nonpublic information while other departments can use such information to provide various other financial services, such as rendering "fairness opinions", without fear of violating federal and state securities and insider trading laws. McDonald asserted that it indeed did have in place effective "Chinese Wall" procedures that complied with the Insider Trading and Securities Fraud Enforcement Act.

RELIEF REQUESTED

Claimant Bray requested compensatory damages in the amount of \$65,591.00, pre-award and post-award interest on all damages awarded, reasonable attorneys fees, and an amount representing all costs and expenses associated with this claim.

Respondent McDonald requested an award dismissing the claim and granting McDonald costs and attorneys fees.

OTHER ISSUES CONSIDERED AND 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 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 Statement of Claim is denied in its entirety and Respondent McDonald is hereby dismissed;
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 \$150.00 and the hearing session deposit in the amount of \$500.00 which was previously deposited with the NASD by Claimant Bray.

The Panel has ordered that the Claimant and the Respondent shall each be responsible for half of the Forum Fees.

(4) hearing sessions X \$500.00 = \$2,000.00 minus the hearing session deposit of \$500.00 previously paid by Claimant = \$1,500.00 net due. Claimant Bray must pay additional Forum Fees to the NASD in the amount of \$500.00. Respondent McDonald must pay additional Forum Fees to the NASD in the amount of \$1,000.00.

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

By the Arbitration Panel:

Dated:

/s/ Herbert S. Bratt
Herbert S. Bratt, Esq.
Public Arbitrator
Chairperson

12/29/94

/s/ H. Michael Spence
H. Michael Spence, Esq.
Industry Arbitrator

12/28/94

/s/ Leonard G. Leverson
Leonard G. Leverson, Esq.
Public Arbitrator

12/28/94

Date Award served by the NASD: 12/30/94