

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

A. DeWayne Wee and Theo R. Wee

94-01041

Name of Respondents

**Equity Securities Trading Co., Inc.
and Michael L. O'Brien**

Representation of Parties

Claimants DeWayne Wee and Theo Wee ("Claimants") were represented at the hearing by Mark J. Briol, Esq. and Gregory L. Wilmes, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

Respondents, Equity Securities Trading Co., Inc. ("Equity") and Michael L. O'Brien ("O'Brien") were represented at the hearing by Terrence M. Fruth, Esq. and Vincent D. Louwagie, Esq. of Fruth & Anthony, Minneapolis, Minnesota.

Case Information

The Statement of Claim was filed on March 17, 1994. Claimants' Submission Agreements were signed on March 1, 1994.

The Statement of Answer was filed on or about May 27, 1994. Respondents Equity Securities Trading Co. and Michael O'Brien's submission agreements were each signed on May 26, 1994.

Hearing Information

The hearing was held on March 20, 1995 for two (2) sessions, March 21, 1995 for two (2) sessions, March 22, 1995 for two (2) sessions, and on March 23, 1995 for two sessions in Minneapolis, Minnesota for a total of eight (8) hearing sessions.

Case Summary

Claimants specifically alleged in their Statement of Claim that respondents, Equity Securities and O'Brien recommended and purchased a security which was unsuitable and that they engaged in representations which were false, incomplete and misleading. Claimants alleged that O'Brien duped them into purchasing 50,700 shares of Precision Optics Corporation stock, alleged to be

a very speculative and risky stock, convinced them to take out a mortgage on their home, and open a margin account to buy the stock on margin. Claimants further alleged that they began to lose their money when the margin calls arrived and there were not enough funds to cover the call.

Claimants set forth the following Counts in their Statement of Claim: Count I, State Securities laws violations Minn. Stat. Sec. 80A.01 and Minn. Stat. Sec. 80A.08; Count II, federal securities fraud Sections 10(b) and Rule 10(b)(5); Count III, violation of Section 12(2) of the Securities Act of 1993; Count IV, general negligence and negligence per se; Count V, breach of fiduciary duties; Count VI, additional bases for equity's liability, respondeat superior, failure to supervise, federal control person liability; Count VII, common law fraud; Count VIII, general punitive damages; Count IX, double punitive damages Minn. Stat. Sec. 332.51; Count X, triple damages for theft, Minn. Stat. Sec. 609.53, Subd. 4; and Count XI, triple damages for RICO, 18 U.S.C. Sec 1961, et seq.

Respondents specifically stated in their Statement of Answer that the Wees are wrong to blame Equity Securities and O'Brien for their losses. Respondents stated that the risks of the investment were fully disclosed to them and that they made the choice to invest in a developing company. Respondents also stated that Claimants had purchased private placements and invested heavily in the stock market for a number of years and their investments were aggressive. Respondents stated that Mr. Wee described himself as a speculator. Respondents stated that claimants signed a Margin Agreement/Loan Consent form and were aware of the risks involved.

Respondents set forth the following affirmative defenses: unclean hands and contributory fault.

Relief Requested

Claimants requested an award of actual out-of-pocket damages in the approximate amount of \$193,565.79; attorney's fees in the amount of \$67,748.03, under the Minnesota Securities law, Minn. Stat. Sec. 80A.23, the triple damages theft statute, Minn. Stat. Sec. 609.53 subd. 4, and RICO, 18 U.S.C. 1961 et seq.; punitive damages in the amount of \$580,697.37 under the general punitive damages statute, Minn. Stat. Sec. 549.20, the double damages theft statute, Minn. Stat. Sec. 332.51, the triple damages theft statute, Minn. Stat. 609.53, subd. 4, and RICO, 18 U.S.C. Sec. 1961 et seq.; for a total award, exclusive of costs and pre-award and post award interest, of \$648,445.40; for pre-award and post award interest on all damages; for a further award of all of claimants costs, disbursements and expenses incurred in pursuing this arbitration; for such other relief as the arbitrators shall deem just and equitable.

Respondents requested that the arbitration panel dismiss the claimants claims in their entirety.

Other Issues Considered and Decided

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 remains 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. Respondents, Equity Securities Trading Company, Inc. and Michael L. O'Brien shall be and hereby are jointly and severally liable for, and shall pay to the claimants the following:

a. compensatory damages in the amount of One Hundred Forty Nine Thousand, Two Hundred Thirty Three Dollars and No Cents (\$149,233.00);

b. simple interest at six percent (6%) on the sum stated above in sub-paragraph a., to begin accruing on August 23, 1993 until the date the award is paid in full;

c. punitive damages in the amount of Fifty Thousand Dollars (\$50,000.00). The panel awarded punitive damages under the authority of Minn. Stat. Sec. 549.20, Minn. Stat. Sec. 609.63, Subd. 4, 18 U.S.C. 1961 et. seq. and Kennedy Mathews v. Young, (Minn. Ct. App. Dec. 13, 1994), Lee v. Chica, (8th Cir. Jan. 12, 1993);

d. attorney's fees in the amount of Fifty Two Thousand, Two Hundred Thirty One Dollars and No Cents (\$52,231.00). The panel awarded attorney's fees under the authority of Minn. Stat. Sec. 80A.23, Minn. Stat. Sec. 609.53, subd. 4 and 18 U.S.C. 1961;

2. Any requests not specifically provided for herein have been denied;

3. Each of the parties shall bear their own costs and expenses, other than those specifically enumerated under Award and Forum Fees.

Forum Fees

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

eight hearing sessions X \$1000 = \$8000 minus \$1000 = net \$7000 due to the NASD.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250, and shall retain the hearing session deposit in the amount of \$1000 previously paid to the NASD by the Claimants.

The additional forum fees in the amount of \$7000 are assessed against Respondents, Equity Securities Trading Co., Inc. and Michael O'Brien, jointly and severally, in the sum of \$7000.

The panel also ordered that the NASD shall refund the hearing session deposit in the sum of \$1000 which was previously deposited by Equity Securities Trading Co.

The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

4/7/95

s/s George A. Beck
George A. Beck, Esq.
Presiding, Public Arbitrator

4/7/95

s/s Cynthia A. Woods
Cynthia A. Woods, Esq.
Public Arbitrator

4/12/95

s/s Brian L. Patterson
*Brian L. Patterson
Industry Arbitrator

* Dissents from the award for interest and punitive damages but concurs in the other elements of the award.

Date Award Served By The NASD: 4/12/95

Arbitrator's Disciplinary Referral

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L. O'Brien**

Arbitrator's Disciplinary Referral

The arbitrators request disciplinary referral of Mr. Michael O'Brien and Equity Securities Trading Company regarding the Disclosure Reporting Page dated 8/11/94. The panel's concern is the delay between the initiation (April 22, 1991), the settlement (March 9, 1992), and the date of the report to the NASD/CRD (August 11, 1994).

Because of Mr. O'Brien's disciplinary history, which included his being barred from the industry for two years for a violation similar to the incident leading to this arbitration, the panel believes that Mr. O'Brien would not have been licensed had the incident and settlement been properly reported. In addition, during this interval, registration was granted by several additional states. Statements were made in letters to Florida, Wisconsin and Missouri which could have been identified as untrue had CRD records been correct. Documentation, taken from Respondents Volume 8, which is part of the hearing record, is attached.

1. The attached letter to Florida dated April 6 includes the untrue statements on page 4 that Mr. O'Brien had no complaints.
2. The attached letter from Wisconsin, endorsed by Mr. O'Brien on July 31, 1991, incorrectly acknowledges that he has been "complaint free".
3. The attached letter to Missouri dated January 31, 1992 incorrectly states on page 4 that Mr. O'Brien had no customer complaints.

At the time these statements were made, Mr. O'Brien was an officer of Equity Securities Trading Company.

By The Panel:

Dated:

April 12, 1995

s/s

George A. Beck

George A. Beck, Esq.

Presiding, Public Arbitrator

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April 12, 1995

s/s Cynthia A. Woods
Cynthia A. Woods, Esq.
Public Arbitrator

April 12, 1995

s/s Brian L. Patterson
Brian L. Patterson
Industry Arbitrator