

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**  
**James Botten**

**94-01131**

**Name of Respondents**  
**South Richmond Securities, Inc.**  
**and David L. Hagans**

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**Representation of Parties**

Claimant, James Botten, appeared at the hearing and was represented by Quentin R. Wittrock, Esq. of Gray Plant Mooty Mooty & Bennett, P.A., Minneapolis, Minnesota.

Respondent, South Richmond Securities, Inc. did not appear at the hearing and was not represented. Respondent, David Hagans appeared at the hearing and represented himself.

**Case Information**

The Statement of Claim was filed on March 23, 1994. Uniform Submission Agreement was signed on March 18, 1994 by James Botten ("Botten").

The joint Statement of Answer was filed on June 22, 1994. The Uniform Submission Agreement was signed on June 2, 1994 by John J. Wilson on behalf of South Richmond Securities, Inc. (hereinafter "South Richmond"). Uniform Submission Agreement was signed on June 22, 1994 by David Hagans (hereinafter "Hagans").

**Hearing Information**

The hearing was held on March 21, 1995 for two sessions in Minneapolis, Minnesota for a total of two (2) hearing sessions.

### **Case Summary**

Claimant Botten alleged in his Statement of Claim that Respondent Hagans, while employed by Respondent South Richmond, engaged in the following in connection with the recommendation and purchase of MedPhone Corp. and Legend Foods, Inc.: negligence, misrepresentation, breach of fiduciary duty, conversion, Minnesota Consumer Fraud Act, securities fraud 1934 Act Rule 10b-5, securities fraud 1933 Act, Minnesota Securities fraud, Minnesota Rules violations, NASD Rules violations, Minnesota Financial Planner Duty violation, vicarious liability.

Respondents, in their joint Statement of Answer, alleged that they deny engaging in any of the wrongdoing set forth in Claimant's Statement of Claim. Respondents stated the following affirmative defenses in their Answer: failure to state a cause of action, statutes of limitation, assumption of risk, ratification, laches, estoppel and waiver, and unclean hands.

### **Relief Requested**

Claimant requested compensatory damages in the amount of at least \$84,483.49; treble damages in the amount of \$253,450.49 pursuant to RICO, 18 U.S.C. Section 1964; interest from the dates of wrongful conduct; punitive damages in the amount of \$250,000.00 pursuant to Minnesota Stat. Sec. 549.20; attorney's fees, arbitration fees, and other costs pursuant to federal and state law and NASD Rules; and such other relief as is just and equitable.

Respondents requested that the claims be dismissed in their entirety, and that the panel award Respondents costs and reasonable attorney's fees.

### **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.

The panel determined that Respondent South Richmond Securities, Inc. had proper notice of the hearing. Pursuant to Section 12 of the NASD Code of Arbitration Procedure, South Richmond is bound by the determination of the panel on all issues submitted for determination.

**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, South Richmond Securities, Inc. and David L. Hagans, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, James Botten, the following:

a. compensatory damages in the amount of Fifty Six Thousand, Eleven Dollars and No Cents (\$56,011.00);

b. interest on the \$56,011.00 to begin accruing from the date of the Award until the date the award is paid;

2. Respondent, South Richmond Securities, Inc. shall be and hereby is liable for, and shall pay to the Claimant, James Botten, the following:

a. punitive damages in the amount of Fifty Six Thousand, Eleven Dollars and No Cents (\$56,011.00). Punitive damages were awarded by the panel based on the parties' briefs and case law submitted during the hearing;

b. attorney's fees in the amount of \$7000. The panel awarded attorney's fees based on statutory authority.

3. Each of the parties shall bear their own costs other than those specifically enumerated under Forum Fees below.

**Forum Fees**

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

two hearing sessions X \$1000 = \$2000 minus \$1000 = net \$1000 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 Claimant.

The additional forum fees in the amount of \$1000 are assessed against South Richmond Securities, Inc. only.

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

**By The Arbitration Panel:**

Dated:

4/11/95

s/s Charles D. Reite  
Charles D. Reite, Esq.  
Presiding, Public Arbitrator

4/12/95

s/s David R. Bergerson  
David R. Bergerson, Esq.  
Public Arbitrator

4/21/95

s/s Emily B. Boote  
Emily B. Boote  
Industry Arbitrator

Date Award Served By The NASD: 4/27/95