

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Roy M. Berry

94-01168

Name of Respondent(s)

D.H. Blair & Company

CASE SUMMARY

In a claim filed with National Association of Securities Dealers, Inc. on March 29, 1994 Claimant Roy Berry, who appeared Pro Se, alleged that Respondent D.H. Blair and Co., Inc., through Richard Molinsky, misrepresented the security Euro-Disney, stating that the above-mentioned security "would soon be listed on an American Stock Exchange". Claimant further alleged that based on Respondent's representations he purchased 300 shares of Euro-Disney on or about March 1992. Claimant also alleged that through June 1993, he only received quarterly statements of shareholding from Respondent, but never received any Euro-Disney Financial statements not was made aware that such statements existed. Claimant contended that in July 1993, he wrote a letter to Respondent, requesting delivery of the stock so he could start receiving shareholder financial information in order to evaluate his Investment in Euro-Disney, and further that the Request was ignored and a follow up request in October 1993 was also ignored. Claimant also alleged that following a third request in December 1993, Richard Molinsky contacted him and acknowledged his previous requests but stated that a transfer of the stock can only be made to another Brokerage Account and not to Claimant individually, and therefore Euro-Disney stock was immediately transferred to another Brokerage account that he owns jointly with his wife. Claimant contended that in January 1994 he contacted Walt Disney Co. complaining about the lack of financial information and he was told he would be put on a Euro-Disney investor relations department mailing list. Claimant further maintained that on or about March 22, 1994 he received a Complete Financial Statement Package From Euro-Disney and that nowhere in the financial statements nor in any press releases from Euro-Disney were there any references made to consideration of Listing in stock on an American Stock Exchange as Respondent had represented to him. Claimant contended that his decision to purchase Euro-Disney was based on Respondent representation that Euro-Disney would soon be listed on an American Stock Exchange, which turned out to be false and therefore, he is entitled to a reversal of the original sale of 300 shares of Euro-Disney.

Respondent D:H. Blair and Co., Inc. through its in-house counsel, Howard Wynn, Esq., New York, NY, maintained that on March 19, 1992 the Claimant placed an order for 300 shares of Euro-Disney stock and that the fact that Euro-Disney was a Foreign stock and not traded on the U.S. Exchanges was discussed prior to Claimant placing his order; therefore, claimant was fully aware that Euro-Disney was not traded on a U.S. Exchange, when he placed the order. Respondent also maintained that Mr. Molinsky never promised nor guaranteed to the Claimant that Euro-disney would soon be listed on a U.S. Exchange, nor does Claimant assert that he relied on any such statement as a basis for his investment. Respondent contended that Claimant, after holding the stock for 15 months without a complaint, requested a delivery of the stock, however, since Euro-Disney was a foreign stock and not traded on a U.S. Exchange, there were no stock certificates to delivery to the Claimant. Respondent further contended that the stock was transferred according to Claimants request, to his account at Charles Schwab and Company on January 19, 1993. Respondent further maintained that they have no control over the dissemination by Euro-Disney of their financial information, and thus is not responsible for Euro-Disney's alleged failure to timely provide the Claimant with financial data about their company. Respondent contended that Claimant was aware that Euro-Disney was not traded on a U.S. Exchange prior to investing and that no guarantees were made that Euro-Disney would soon be on a U.S. Exchange, and that Respondent is not responsible for Euro-Disney's failure to send financial information to Claimant, and therefore, Claimant failed to state a claim or cause of action upon which relief can be granted, and all claims should be dismissed in their entirety.

RELIEF REQUESTED

Claimant Roy Berry requested \$8,823.70 in actual damages.

Respondent D. H. Blair & Co. requested that the claims of the claimant be dismissed.

AWARD

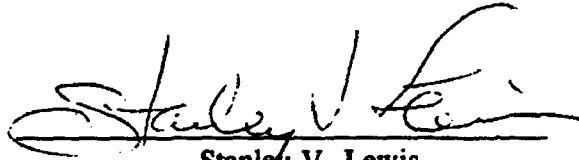
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stanley V. Lewis, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 25, 1994 and by the Respondent on April 20, 1994.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent D.H. Blair and Company, Inc. is liable and shall pay to Claimant Roy M. Berry \$8,823.70 in actual damages. Claimant Roy M. Berry shall relinquish 300 shares of Euro-Disney stock to Respondent D.H. Blair and Company, Inc. upon payment.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Roy M. Berry, shall be retained by the NASD. Respondent D.H. Blair and Company, Inc. is liable and shall pay \$75.00 to the Claimant in reimbursement of one-half the filing fee.

AFFIRMATION

I, Stanley V. Lewis, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Stanley V. Lewis

Date of Decision: April 27, 1995