

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

In the Matter of the Arbitration Between

Name of Claimant

Ronald A. McDow d/b/a Ram Trading

and

94-01621

Name of Respondent

Thomas F. White & Co., Inc.  
U.S. Clearing Corp.

---

### **REPRESENTATION OF PARTIES**

Ronald A. McDow d/b/a Ram Trading ("**Claimant**") was represented by Michael A. Meyers, Esq., Sidwell & Barrett, P.C., Franklin, Tennessee and Michael L. Dagley, Esq., Farris, Warfield & Kanaday, Nashville, Tennessee.

Thomas F. White & Co., Inc. ("**Respondent White**") and U.S. Clearing Corp. ("**Respondent U.S. Clearing**") were represented by Andrew H. Wilson, Esq., Wilson, Ryan & Campilongo, San Francisco, California.

### **CASE INFORMATION**

The Statement of Claim was filed on or about May 3, 1994. Amended Statement of Claim was filed on or about May 20, 1996. Submission Agreement of Claimant Ronald A. McDow d/b/a Ram Trading was signed on March 31, 1994.

Motion to Dismiss and Answer to Statement of Claim was filed by Respondents Thomas F. White & Co., Inc. and U.S. Clearing Corp. on or about November 18, 1994.

### **HEARING INFORMATION**

The hearing was held on Monday, June 10, 1996 for two (2) sessions and Tuesday, June 11, 1996 for two (2) sessions in Nashville, Tennessee for a total of four (4) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents engaged in misrepresentation; violations of the NASD Rules of Fair Practice; negligence and negligent misrepresentations; breach of contract; breach of fiduciary duty; breach of duty of good faith and fair dealing; and violations of the Tennessee Securities Act. Specifically, Claimant alleged that Respondents notified him of erroneous margin calls that required that he liquidate positions in T<sup>2</sup> Medical, Scoreboard and Datarace. Claimant also alleged that Respondents failed or refused to provide him with requested information regarding the calculations for the erroneous margin calls received by him.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that they liquidated certain shares in the Claimant's two accounts to cover margin calls, after giving verbal and written notice to the Claimant. It was further stated that, Claimant admitted that he was notified of the sell outs and that the price histories clearly indicate that the Claimant could have, but failed to, cover his position in the stocks at the same price at which he was sold out.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$213,587.50 in compensatory damages; punitive damages in the amount of \$640,762.50; interest; attorneys' fees; and costs.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Thomas F. White & Co., Inc. and U.S. Clearing Corp. did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$1,000 = \$4,000 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,250 previously deposited with the NASD by the Claimant Ronald A. McDow d/b/a Ram Trading. Claimant Ronald A. McDow d/b/a Ram Trading shall be and hereby is liable for and shall pay to the NASD the sum of \$750 for forum fees. Respondents Thomas F. White & Co., Inc. and U.S. Clearing Corp. shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$2,000 as forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **assess** against Respondent Thomas F. White & Co., Inc. the non-refundable member surcharge in the amount of \$200. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Lee Cowen

Lee Cowen

Public Arbitrator, Presiding Chair

June 25, 1996

/s/ Peter J. Towle, Esq.

Peter J. Towle, Esq.

Public Arbitrator

June 22, 1996

/s/ Phil Lubetkin

Phil Lubetkin

Industry Arbitrator

June 21, 1996