

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Aspen Capital Group

94-01998

Name of Respondent

J.B. Oxford & Company

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 1, 1994, Claimant Aspen Capital Group, through its representative and Vice President, Robert V. Sherman, Esq., alleged that Respondent J.B. Oxford & Company, executed a buy-in at a price which was too high. Claimant further alleged that on May 5, 1994, Respondent executed a CNS "buy-in", for 4,790 shares of IDM Environmental CP Units ("IDMCU"), at a price of 10 7/8. Claimant contended that the Uniform Practice Code states that "if the origination of a buy-in in a depository eligible security is a participant in a registered securities depository, the buy-in may not be executed prior to 2:30 P.M. Eastern Standard Time" and further states "in all cases, members must be prepared to defend the price at which, the buy-in is executed relative to the current market at the time of the buy-in." Claimant further contended that from the allowable time of execution until the close of trading on May 4, 1994, the market for IDMCU was substantially lower than the execution price of the buy-in with the weighted average price for this time period being \$9.8214. As a result of the above, Claimant alleged that he has suffered a loss for which Respondent should be held liable.

Respondent J.B. Oxford & Company, through its representative and in-house counsel, Scott G. Monson, Esq., maintained that Midwest Clearing Corporation ("Midwest") was the originator of the buy-in. Respondent further maintained that Midwest determined the price of the buy-in and Respondent merely passed that price through to Claimant. Respondent contended that if liability exists in this arbitration matter that liability lies with Midwest or some other entity and accordingly, Respondent should not be held liable.

RELIEF REQUESTED

Claimant Aspen Capital Group, requested \$5,621.74 in actual damages, plus costs.

Respondent J.B. Oxford & Company, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Gene R. Thornton, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 25, 1994. The Respondent did not submit a Submission Agreement as required pursuant to Sections 8 and 10 of the NASD Code of Arbitration Procedure.

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. The claims of the Claimant Aspen Capital Group, against Respondent J.B. Oxford & Company, Inc., are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$575.00 filing fee of which \$500.00 was previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Aspen Capital Group, shall be retained by the NASD, Inc. Respondent J.B. Oxford & Company, is liable and shall pay to the Claimant Aspen Capital Group, \$500.00 as reimbursement of the filing fee, and \$75.00 to the NASD.

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AFFIRMATION

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



Gene R. Thornton

DATE OF DECISION: August 29, 19954