

AWARD

NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

Orlan E. Wood

Arbitration
No. 94-02254

Name of Respondent(s)

Terence J. Murphy
Robert Den Herder

REPRESENTATION

For Claimant: Jack G. Orr, Esq., Harris, Mericle, Orr, Wakayama & Mason, Seattle, Washington

For Respondent Robert Den Herder: Linda M. Deola, Esq., Reynolds, Motl, and Sherwood, Helena, Montana

For Respondent Terence J. Murphy: No appearance by Terence J. Murphy

CASE INFORMATION

Statement of Claim filed: June 13, 1994

Supplement to Statement of Claim filed: November 5, 1994

Claimant's Submission Agreement signed: April 6, 1994

Statement of Answer and Cross-Claim filed by Respondent Terence J. Murphy: October 7, 1994

Respondent Robert Den Herder's Answer to Statement of Claim and

Cross-Claim of Respondent Terence J. Murphy filed: October 25, 1994

Respondents' Submission Agreements signed as follows:

Robert Den Herder: October 21, 1994

Terence J. Murphy: October 4, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

May 1, 1996 (one session)

Hearing Date(s)/Session(s): February 4, 1997 (one session)

Hearing Location:

Seattle, Washington

CASE SUMMARY

Claimant alleged that Respondents failed to follow Claimant's instructions with respect to Claimant's investment objectives and regarding investments in various securities. Claimant further alleged deceit; that Respondents mishandled Claimant's account; and that Respondents made inappropriate investments in connection with Claimant's account.

Respondent Terence J. Murphy denied Claimant's allegations of wrongdoing. Respondent Murphy alleged that Claimant's Claim neither mentions nor asserts any claims against Respondent Murphy and further alleged that Respondent Murphy never had any contact with Claimant Orlan E. Wood. Respondent Murphy further alleged that all risks concerning investing were known to Claimant and Claimant knowingly, willingly and voluntarily assumed the risk of investing and that Claimant is precluded from recovery in this matter. Respondent Murphy also asserted various affirmative defenses.

In his Cross-Claim, Respondent Murphy alleged that Respondent Robert Den Herder is liable for any and all damages caused to Claimant Orlan E. Wood and should be directly liable to Mr. Wood for all of any award to Mr. Wood.

Respondent Robert Den Herder denied each and every allegation set forth in Claimant's Claim and alleged that Claimant is a

sophisticated investor who was aware of the risks and nature of each investment and ratified each and every trade. Respondent Den Herder further alleged that Claimant intimidated and threatened Respondent Den Herder, if he would not sign a letter guaranteeing investments Claimant knowingly and willingly entered into. Respondent Den Herder also denied each and every allegation set forth in the Cross-Claim of Mr. Murphy. Respondent Den Herder alleged that Respondent Murphy was at all times Respondent Den Herder's supervisor, responsible for adequately supervising Respondent Den Herder as required under the NASD Rules of Fair Practice. Respondent Den Herder further alleged that Respondent Murphy is the very person which provided Respondent Den Herder with information regarding the investments which Claimant complains. Respondent Den Herder further alleged that Respondent Murphy was aware of the activities of Respondent Den Herder and if the panel deems any actions inappropriate, it is Murphy who was Respondent Den Herder's supervisor who should be held fully responsible.

RELIEF REQUESTED

Claimant requested:

1. \$40,000.00 with respect to investments in Performance Nutrition and Remington Financial, plus 12% interest from date of investments;
2. \$7,000.00 returned for Specialized Mobile Radio Station License in Reno, Nevada, plus 12% interest from date of investment;
3. \$10,000.00 or, whatever is required for attorney and expert witness fees;
4. \$20,000.00 for mental anguish in connection with Claimant's investments; and
5. Return of NASD filing fee of \$400.00.

Respondent Murphy requested that Mr. Wood's Statement of Claim as to Respondent Murphy be denied in its entirety, that the costs of these proceedings be charged to Claimant or in the alternative to Respondent Den Herder and that the panel decide in favor of Respondent Murphy. Respondent Murphy further requested that Respondent Den Herder be held individually liable for any damages to Mr. Wood and requested such other and further relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 2, 1996, the panel of arbitrators reviewed and considered the written and oral positions of the parties relative to Respondent Cowles, Sabol & Co., Inc.'s Motion to Dismiss. The panel granted the Motion, without prejudice.

On or about October 29, 1996, the panel of arbitrators reviewed and considered the positions of the parties relative to Respondent Robert Den Herder's Motion to Dismiss Claimant's Claim pursuant to Section 6 of the NASD Code of Arbitration Procedure. The panel denied the Motion.

At the outset of the hearing, the panel of arbitrators was advised that Claimant reached a settlement with Respondent Robert Den Herder and that Claimant was continuing with his claims against Respondent Terence J. Murphy.

Respondent Terence J. Murphy did not appear at the hearing. The panel determined that Mr. Murphy was properly served and ruled to proceed in Mr. Murphy's absence.

The panel dismissed Respondent Del Mar Securities, without prejudice, after determining that service was not effectuated with respect to Del Mar Securities.

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with NASD Regulation, Inc. (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. Respondent Terence J. Murphy is solely liable for and shall pay to Claimant Orlan E. Wood the sum of \$94,560.00.

Respondent Murphy is allowed an offset for whatever settlement amount is actually collected by Mr. Wood from Robert Den Herder.

2. All claims with respect to Terence J. Murphy's Cross-Claim are dismissed.

3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimant Orlan E. Wood's hearing session deposit in the amount of \$500.00; and shall retain Terence J. Murphy's hearing session deposit in the amount of \$600.00. Forum fees are assessed against Respondent Murphy, in the amount of \$200.00, calculated as follows: One pre-hearing session times \$300.00 plus one hearing session times \$500.00, minus the \$600.00 hearing session deposit retained by the NASD.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Robert M. Stein, Esq.	Public Arbitrator
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Richard E. Keefe, Esq.	Public Arbitrator
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George E. Casperson	Industry Arbitrator
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Concurring Arbitrators' Signatures



Robert M. Stein, Esq.

Richard E. Keefe, Esq.

George E. Casperson

Date of Decision: 3-11-97

Respondent Murphy is allowed an offset for whatever settlement amount is actually collected by Mr. Wood from Robert Den Herder.

2. All claims with respect to Terence J. Murphy's Cross-Claim are dismissed.

3. The parties shall each bear their respective costs including attorney's fees.

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ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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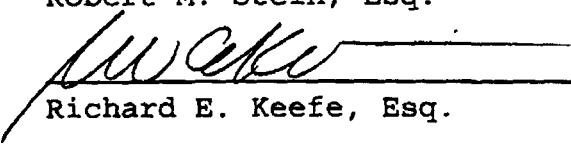
Robert M. Stein, Esq.	Public Arbitrator
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Richard E. Keefe, Esq.	Public Arbitrator
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George E. Casperson	Industry Arbitrator
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Concurring Arbitrators' Signatures

Robert M. Stein, Esq.



Richard E. Keefe, Esq.

George E. Casperson

Date of Decision: 3-12-97

Respondent Murphy is allowed an offset for whatever settlement amount is actually collected by Mr. Wood from Robert Den Herder.

2. All claims with respect to Terence J. Murphy's Cross-Claim are dismissed.

3. The parties shall each bear their respective costs including attorney's fees.

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Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimant Orlan E. Wood's hearing session deposit in the amount of \$500.00; and shall retain Terence J. Murphy's hearing session deposit in the amount of \$600.00. Forum fees are assessed against Respondent Murphy, in the amount of \$200.00, calculated as follows: One pre-hearing session times \$300.00 plus one hearing session times \$500.00, minus the \$600.00 hearing session deposit retained by the NASD.

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Robert M. Stein, Esq.	Public Arbitrator
Richard E. Keefe, Esq.	Public Arbitrator
George E. Casperson	Industry Arbitrator

Concurring Arbitrators' Signatures

Robert M. Stein, Esq.

Richard E. Keefe, Esq.



George E. Casperson

Date of Decision: March 7, 1997

Date Served: 03/27/97