

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Donald Jamieson

and

94-02344

Name of Respondent

Kirkpatrick, Pettis, Smith, Polian, Inc.

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### **REPRESENTATION OF PARTIES**

Donald Jamieson ("Claimant") was represented by Gregory D. May, Esq., Munsch Hardt Kopf Harr & Dinan, Dallas, Texas.

Kirkpatrick, Pettis, Smith, Polian, Inc. ("Respondent") was represented by Raymond R. Hessling, Jr., Kirkpatrick, Pettis, Smith, Polian, Inc., Omaha, Nebraska.

### **CASE INFORMATION**

The Statement of Claim was filed on or about June 21, 1994. Claimant's First Amended Statement of Claim was filed on or about April 17, 1995. Submission Agreement of Claimant Donald Jamieson was signed on June 7, 1994.

Statement of Answer was filed by Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. on or about September 28, 1994. Amended Statement of Answer to First Amended Statement of Claim was filed on or about May 18, 1995. Submission Agreement of Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. was signed on September 27, 1994 by Raymond R. Hessling, Jr.

### **HEARING INFORMATION**

The hearing was held on Tuesday, May 23, 1995 in Dallas, Texas for a total of two (2) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent breached its contract with the Claimant and was negligent. Specifically, Claimant alleged that Respondent allowed the account to incur margin indebtedness

and disbursed funds through check writing activities without obtaining the authorization or consent of Donald Jamieson.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that at the time the Jamiesons established the joint account they established an account with Mutual of Omaha Cash reserve Fund which allowed that any one of the Jamiesons was authorized to redeem shares from their Cash Reserve Fund Account. Respondent further stated that it lent money pursuant to the Margin Agreement established by the Jamiesons and deposited those funds into the Cash Reserve Fund Account.

### **RELIEF REQUESTED**

Claimant requested that he be awarded all of his actual damages as requested (\$174,276 plus interest), together with attorneys' fees and all costs and forum fees expended in this matter, together with such other and further relief to which he may be entitled.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

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

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the 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. All claims asserted in this matter shall be and hereby are dismissed and denied 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 \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 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 \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Donald Jamieson. Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$750 as the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall retain the member surcharge in the amount of \$200 previously paid to the NASD by Respondent Kirkpatrick, Pettis, Smith, Polian, Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ P. Michael Armstrong, Esq.

P. Michael Armstrong, Esq.

Public Arbitrator, Presiding Chair

June 6, 1995

/s/ George C. Witte

George C. Witte

Public Arbitrator

June 6, 1995

/s/ Timothy L. Andrews

Timothy L. Andrews

Industry Arbitrator

June 6, 1995