

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant(s)

Frank Fountain

NASD Arbitration

No. 94-02394

Name of Respondent(s)

J.W. Bullard & Company

J.W. Bullard

Lillian Vinci

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**REPRESENTATION**

For Claimant: George L. de la Flor, Esq., San Diego, California

For Respondents: No Appearance by Respondents.

**CASE INFORMATION**

Statement of Claim filed: June 14, 1994

Claimant's Submission Agreement signed: June 14, 1994

Statement of Answer filed by Respondent Lillian Vinci: February 7, 1995

Respondent Lillian Vinci's Submission Agreement signed: February 3, 1995

Respondents J.W. Bullard & Company (also known as James W. Bullard, Jr., Inc.) and J.W. Bullard (also known as James W. Bullard, Jr.) did not file a Statement of Answer and Submission Agreements and did not appear at the hearing. Respondent Lillian Vinci did not appear at the hearing. However, all Respondents were duly served and are subject to National Association of Securities Dealers, Inc.

(NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): January 9, 1996 (one session)

Hearing Location: San Diego, California

#### CASE SUMMARY

Claimant alleged the following claims with respect to various investments made in Claimant's account: 1) Unauthorized Trading - Against all Respondents; 2) Churning of Account - Against all Respondents; 3) Improper Trading - Against all Respondents; 4) Breach of Contract - Against Bullard; 5) Fraud - Against all Respondents; and 6) Breach of Fiduciary Duty - Against all Respondents.

Respondent Lillian Vince denied Claimant's allegations of wrongdoing including but not limited to unauthorized trading, churning, improper stock selection, breach of contract, fraud and breach of fiduciary duty. Respondent Vince alleged that each and every transaction was not only authorized but also was suitable for Claimant's account in light of Claimant's objectives and financial wherewithal. Respondent Vince further alleged that she at all times handled Claimant's account properly and in accordance with all industry rules and regulations and that Claimant's complaint is simply a frivolous after-the-fact attempt to recoup losses sustained as a result of market conditions outside her control, and should be dismissed.

#### RELIEF REQUESTED

Claimant requested:

On the first and second claims for relief:

1. compensatory damages in the amount of \$13,345.00;

On the third claim for relief:

1. compensatory damages in the amount of \$15,952.85;

On the fourth claim for relief:

1. compensatory damages in the amount of \$11,000.00;

On the fifth and sixth claims for relief:

1. compensatory damages in the amount of \$15,952.85;
2. punitive and exemplary damages in the amount of \$100,000.00; and

On all claims for relief:

1. interest, attorney's fees, costs and such other and further relief as deemed proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the panel of arbitrators reviewed and considered Claimant's Motion to Add Additional Respondent; Motion to Suppress Evidence; and/or Motion for Judgment by Default; and/or Motion for Partial Summary Judgment. The panel granted the Motion to Add Additional Respondent. The panel determined that they would rule on the other motions at the evidentiary hearing after receiving further arguments by the parties. During the evidentiary hearing, the panel required Claimant to present his case in chief following the panel's determination that all parties had received proper notice of the hearing.

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 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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$14,679.00, inclusive of interest.
2. Claimant's claims for punitive and exemplary damages are denied.

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

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against Respondents, jointly and severally, in the amount of \$750.00, calculated as follows: One hearing session times \$750.00/session.

Fees are payable to the National Association of Securities Dealers, Inc.

#### ARBITRATORS

Name \_\_\_\_\_ Public / Industry

Merton A. Bobo, Esq.

Public Arbitrator

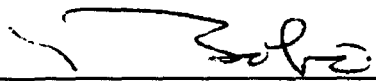
Edward W. Burnett

Public Arbitrator

Robert H. Hughes

Industry Arbitrator

#### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Merton A. Bobo, Esq.

\_\_\_\_\_  
Edward W. Burnett

\_\_\_\_\_  
Robert H. Hughes

Date of Decision: \_\_\_\_\_

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Edward W. Burnett	Public Arbitrator
Robert H. Hughes	Industry Arbitrator

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Edward W. Burnett	Public Arbitrator
Robert H. Hughes	Industry Arbitrator

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Edward W. Burnett

\_\_\_\_\_  
Robert H. Hughes

Date of Decision: 2/9/96