

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

William J. Turkowski

vs.

Award No.  
95-00120

Name of Respondent

Cartwright & Walker Securities, Inc.

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**REPRESENTATION**

Claimant, William J. Turkowski ("Claimant"), appeared Pro Se.

There was no appearance by, or on behalf of, Respondent Cartwright and Walker Securities, Inc. ("Respondent").

**CASE INFORMATION**

Statement of Claim was filed on January 9, 1995.

Claimant's Submission Agreement was signed on January 4, 1995.

Respondent did not file an Answer or execute a Submission Agreement. (See Other Issues Considered and Decided in this decision).

**HEARING INFORMATION**

Hearing Date/Session: September 7, 1995 - 1 session

Hearing Location: NASD offices located at 33 Whitehall Street, New York, New York.

**CASE SUMMARY**

This claim seeks damages resulting from misrepresentation of the price of stock and failure to follow instructions.

Claimant alleges that on or about July 20, 1994, he was contacted by Michael Marcus, a broker employed by Respondent Cartwright and Walker. Claimant also alleges he had no contact with Mr. Marcus prior to that date. Claimant asserts that Mr. Marcus solicited the purchase of a stock, Metro Wireless Interactive Corporation. Claimant also asserts that Mr. Marcus informed him that this stock was a "sure thing" because the company had a patent which Sony, AT&T and all the communications giants were bidding for. Claimant further asserts Mr. Marcus indicated that the sale of the patent was imminent and that he could get Claimant one thousand (1,000) shares at \$5.00 per share plus a commission of \$120.00 for a total cost of \$5,120.00.

At the hearing Claimant alleges that during the telephone conversation with Mr. Marcus on July 20, 1994, the latter obtained Claimant's financial background data. Claimant also alleges that, during that telephone conversation, he informed Mr. Marcus that Claimant's risk "tolerance" was 20% and that his losses should be limited to 20%.

Claimant further alleges that, on Mr. Marcus' instructions, he made out a check in the amount of \$5,120.00, payable to Oxford & Company, who he was told, was the clearing house for Respondent. In addition, Claimant alleges that a statement from Respondent dated July 29, 1994, indicated that the transaction was not entered until July 25, 1994. Further, Claimant alleges the trade was executed at 5 1/8 and not the quoted \$5, the authorized purchase price.

Claimant alleges he had no further contact with Respondent or Mr. Marcus even though the stock decreased "below the 20% threshold he had set". Additionally, he alleges that on the November, 1994 statement the stock was valued at 1/4, a loss of 95%.

Claimant maintains that the investment was not suitable for his financial status and, moreover, the Respondent failed to follow his instructions to sell his stock should it drop below 20%.

#### **RELIEF REQUESTED**

Claimant requests damages in the amount of \$4,000.00.

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

The party present at the hearing has agreed that the Award in this matter may be executed in counterpart copies and has agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Respondent was not present during the hearing. The Panel determined Respondent to be a member of the NASD at the time of the filing of this claim and is subject to jurisdiction of this Arbitration. The Panel also determined that proper notice was given by the NASD by certified and first class mail addressed to the Respondent's last known address of record. The Panel further determined that the notice was not returned by post office to the NASD as undelivered pursuant to Section 25 of the *Code of Arbitration Procedure* ("Code").

The Panel finally determined that the hearing should be held as scheduled even in the absence of Respondent.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant is awarded damages in the amount of \$4,000.00.
- 2) Respondent shall reimburse Claimant \$150.00 as indicated in the Forum Fees Section of this decision.

**FORUM FEES**

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed against Respondent:

Non-refundable Filing Fee: \$50.00

Hearing Session Fee: \$100.00

Total Fees: \$150.00

Total Fees assessed against Respondent: \$150.00

Total Fees owed by Respondent: \$150.00

- 1) Claimant previously deposited \$150.00 and is entitled to a refund in that amount.
- 2) Respondent shall satisfy the fees assessed by reimbursing Claimant \$150.00.

Sole Public Arbitrator



Ernest Fanwick, Esq.

NASD Date of Decision: November 30, 1995

**AFFIRMATION**

I, Ernest Fanwick, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.



Ernest Fanwick, Esq.