

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

C.J. and Nora B. Wangerin

95-00360

Name of Respondents

D.H. Blair & Company
Richard C. Smith

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 23, 1995, Claimants C.J. and Nora B. Wangerin ("Claimants"), who appeared Pro Se, alleged that Respondents D.H. Blair & Company ("DHB"), through its representative Respondent Richard C. Smith ("Smith"), misled them in certain investments which caused unreasonable losses. Claimants further alleged that Smith made deceptive presentations and did not fully disclose information. Claimants contended that Smith recommended a purchase of Applied Laser Warrants ("ALW") on March 28, 1994 which they followed to their detriment. Claimants further contended that after their purchase of the ALW Smith told them that an executive of Applied Laser had sold a large amount of stock which was seriously depressing its price. Claimants alleged that on November 14, 1994, they requested that their stocks be sold and that the proceeds be delivered to them. Claimants further alleged that Respondents failed to follow their instructions in that they did not sell their Natural Earth stock until they were reminded on November 21, 1994. Claimants contended that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents D.H. Blair & Company, and Richard C. Smith, through their representative and in-house counsel, Howard M. Wynn, Esq., maintained that no misrepresentations were made to the Claimants regarding their investments. Respondents further maintained that Smith explained to C.J. Wangerin the substantial risk associated with investing in emerging growth companies. Respondents contended that C.J. Wangerin acknowledged that he understood the risks and was willing to accept them. Respondents further contended that Claimants profited from purchases of ALW on two prior occasions which further demonstrates their willingness to accept the risks associated with this security. Respondents maintained that Claimants were, in good faith, apprised all available information concerning their investments but that market forces beyond Respondents control caused the decline in ALW. Respondents further maintained that on November 4, 1994 C.J. Wangerin informed Smith to sell all his securities except for the Natural earth Technologies ("NET") holding because he thought the price would rebound. Respondents contended that on November 21, 1994 C.J. Wangerin contacted Smith and told him to sell the NET stock which was immediately sold. Respondents maintained that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants C.J. and Nora B. Wangerin, requested \$3,592.50 in actual damages plus \$1,000.00 in compensatory damages.

Respondents D.H. Blair & Company, and Richard C. Smith, requested that the claims of the Claimant be dismissed.

ISSUES CONSIDERED AND DECIDED

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul Sidney Elliott, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 19, 1995, and not by the Respondents as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided the issues submitted for determination as follows:

1. The arbitrator reviewed and considered all documentation submitted by the parties concerning Respondents' D.H. Blair & Company and Richard C. Smith, Motion to Dismiss for failure to state a cause of action upon which relief can be granted. The arbitrator granted the Motion. The claims of the Claimants C.J. and Nora Wangerin against Respondents D.H. Blair & Company and Richard C. Smith are denied in their entirety.
2. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants C.J. and Nora Wangerin, shall be retained by the NASD, Inc.

AFFIRMATION

I, **PAUL SIDNEY ELLIOTT, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Paul Sidney Elliott, Esq.

DATE OF DECISION: May 7, 1996