

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

John Ballard

and

95-00416

Name of Respondent

Fleming, Anderson, Cohen & Lee
Charles F. Batey, III

REPRESENTATION OF PARTIES

John Ballard ("**Claimant**") was represented by Paul G. Bursiek, Esq., Pendleton & Sabian, P.C., Denver, Colorado.

Fleming, Anderson, Cohen & Lee ("**Respondent**") was represented by G. David Marin, President

Charles F. Batey, III ("**Respondent Batey**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about January 26, 1995. Submission Agreement of Claimant John Ballard was signed on January 18, 1995.

Statement of Answer was filed by Respondent Fleming, Anderson, Cohen & Lee and Respondent Charles F. Batey, III on or about March 27, 1995. Submission Agreement of Respondent Fleming, Anderson, Cohen & Lee was signed on March 24, 1995 by G. David Marin. Submission Agreement of Respondent Charles F. Batey, III was signed on March 24, 1995.

HEARING INFORMATION

The hearing was held on Thursday, September 7, 1995 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondents actions constituted causes of action for breach of contract, negligence, unjust enrichment, common law fraud and securities fraud. Specifically, Claimant alleged that Respondents illegally withheld profits from short selling TVI stock. Claimant also alleged that losses resulting from covering short positions in TVI were charged to him by Respondents.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that no profit was recognized in the Claimant's account, because a client is not allowed to profit from "free riding". Respondents further stated that the Claimant could have cancelled the short sale, but chose to make the trades in a cash account which required delivery of the shares. In the counterclaim asserted in this matter, Respondents alleged that Claimant acted in a negligent manner and breached his contract.

RELIEF REQUESTED

Claimant requested an award of damages from Respondents jointly and severally, together with interest, punitive damages, costs and disbursements including reasonable attorneys' fees, and such other relief as is just and proper.

Respondents requested that the claims asserted against them be denied in their entirety. In the counterclaim, Respondents requested an award in the amount of \$10,000, punitive damages, and an award of cost and disbursements in defending this matter including reasonable 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. Respondent Fleming, Anderson, Cohen & Lee shall be and hereby is liable for and shall pay to the Claimant John Ballard the sum of **Twelve thousand four hundred dollars (\$12,400)**.
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of November 1, 1994 to and inclusive of the date this award is paid in full.

3. The claims asserted against Respondent Charles Batey shall be and hereby are dismissed in their entirety.
4. The counterclaim asserted by Respondents shall be and hereby is dismissed in its' entirety.
5. Each party shall bear its own costs, expenses and attorneys' fees, if any, incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400 = \$800 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 \$100 and shall **retain** as forum fees \$266.66 of the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant John Ballard. Respondent Fleming, Anderson, Cohen & Lee shall be and hereby is liable for and shall pay to the NASD the non-refundable filing fee in the amount of \$500 for the counterclaim asserted in this matter and shall pay to the NASD the sum of \$266.67 as forum fees. Respondent Charles F. Batey, III shall be and hereby is liable for and shall pay to the NASD the sum of \$266.67 as the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **retain** the non-refundable member surcharge in the amount of \$200 previously paid to the NASD by Respondent Fleming, Anderson, Cohen & Lee shall be and hereby is liable for and shall pay to **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Thaddeus J. Tecza, PhD.

Thaddeus J. Tecza, PhD.

Public Arbitrator, Presiding Chair

September 12, 1995

/s/ John Worcester

John Worcester

Public Arbitrator

September 11, 1995

/s/ Cletus E. Byrne, Jr.

Cletus E. Byrne, Jr.

Industry Arbitrator

September 11, 1995