

## **NASDR AWARD**

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

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In the Matter of the Arbitration Between

Misty Corp., Inc. and Anglo, Inc.

Claimants,

v.

No. 95-01195

Harold L. Mall and Weber Investment Corp.

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants Misty Corp., Inc. and Anglo, Inc. were represented by Steven R. Dunn, Esq. of Law Firm of Steven R. Dunn located in Dallas, TX.

Respondent Harold L. Mall was represented by Cheryl Jerome Moore, Esq. and Stephen Johnson, Esq. of Mankoff Hill Held & Metzger located in Dallas, TX.

Respondent Weber Investment Corp. was represented by Cheryl Jerome Moore, Esq. and Stephen Johnson, Esq. of Mankoff Hill Held & Metzger located in Dallas, TX.

### **CASE INFORMATION**

Claimant Misty Corp. and Anglo, Inc.'s Statement of Claim was filed on or about March 8, 1995.

Claimant Misty Corp. and Anglo, Inc.'s Submission Agreement was signed on April 3, 1995 by John F. Whitehorn, Authorized Representative of Misty Corp. and Anglo, Inc.

Respondent Harold L. Mall's Statement of Answer was filed on or about June 20, 1995.

Respondent Harold L. Mall's Submission Agreement was signed on May 30, 1995.

Respondent Weber Investment Corp.'s Statement of Answer was filed on or about June 20, 1995.

Respondent Weber Investment Corp.'s Submission Agreement was signed on May 30, 1995 by Terry D. Rader, President of Weber Investment Corp.

### **HEARING INFORMATION**

A prehearing conference was held on January 26, 1996 for one (1) session.

The hearing was held on: June 4, 1996 for two (2) sessions; June 5, 1996 for two (2) sessions; and June 6, 1996 for three (3) sessions in Dallas, TX for a total of seven (7) sessions.

### **CASE SUMMARY**

Claimants Misty Corp. and Anglo, Inc. ("Claimants") alleged that Respondents Harold L. Mall and Weber Investment Corp. ("Respondents") failed to adequately disclose risks associated with trading on margin accounts and to sell Claimants' shares of stock in Spectrum Information Technologies, Inc. ("Spectrum"), as was supposedly agreed to in an Automatic Sell Order signed by Harold L. Mall. Claimants assert the following causes of action: (1) Deceptive Trade Practices - Consumer Protection Act; (2) breach of fiduciary duty; (3) negligence; (4) negligent misrepresentation; (5) breach of the duty of good faith and fair dealing; (6) securities fraud under the Texas Business and Commerce Code § 27.001 et seq.; and (7) 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that no suggestion or recommendation was ever made to trade on margin, that Claimants initiated trading activity of Spectrum, and that no agreement was ever reached about an Automatic Sale Order. Respondent entered the following affirmative defenses: (1) Claimants' Statement of Claim fails to state a claim upon which relief can be granted; (2) Claimants' were knowledgeable and experienced in investing; (3) Claimants' were in total control of all transactions at all times; (4) Respondents made a full, fair and truthful disclosure of the potential risks and potential benefits of investments in Spectrum and other stocks at all times; (5) Claimants' made their own independent judgment in making investment decisions; (6) all transactions were authorized by Claimants; (7) Claimants are estopped from any right of recovery of any amounts because they were fully aware of the risks involved; (8) Claimants are not entitled to recover from Respondents the alleged damages under the doctrine of assumption of the risk since Claimants were aware of the risks and voluntarily assumed such risks; (9) Claimants' conduct and agreements waived their right to assert the claims asserted in the Statement of Claims; (10) Claimants' actions, words, and conduct ratified, adopted and confirmed the actions and conduct of Respondents that Claimants now complain of; (11) Claimants failed to mitigate any damages; and (12) the arbitrators are not empowered to award punitive damages, and, even if awardable, punitive damages are not called for in this case.

**RELIEF REQUESTED**

Claimant requested an award of: \$1,091,702.00 in actual damages plus interest after judgment; a refund of all commissions in the amount of \$51,576; exemplary damages of at least \$10,000,000; attorney's fees plus interest; and costs of arbitration.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their attorneys' fees.

**OTHER ISSUES CONSIDERED & DECIDED**

The panel heard and considered testimony of the Claimant's expert Douglas Schultz. The panel did consider this testimony but found that Douglas Schultz's testimony was weak. The panel was unable to rely upon his testimony.

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 NARDR.

**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) The Statement of Claim is denied in its entirety with prejudice; and
- (2) That other than forum fees, which are addressed below, all other relief not specifically awarded are hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,500 per hearing session and \$300 for each prehearing conference, if any. There was one (1) prehearing session x \$300 = \$300, and seven (7) hearing sessions x \$1,500 = \$10,500 resulting in \$10,800 in forum fees. Pursuant to §43(b) of the NARDR Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a prehearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NARDR shall **retain** the non-refundable filing fee in the amount of \$300 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,500 previously deposited with the NARDR by the Claimant .

Pursuant to §45 of the Code, the NARDR the Respondents shall pay the member surcharge fee in the amount of \$500.

The remaining forum fees in the amount of \$9,300 are assessed against Claimants. Therefore, Claimants are liable for and shall pay \$9,300 to the NARDR.

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

Dated:

/s/ Joan Stearns-Johnsen  
Joan Stearns-Johnsen, Esq.  
Public Arbitrator, Presiding Chair

August 13, 1996

/s/ K. Steve Kimball  
K. Steve Kimball  
Public Arbitrator

8-8-96

/s/ William D. Connally  
William D. Connally  
Industry Arbitrator

8-2-96

Date of Service by the NARDR: August 13, 1996