

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

William & Barbara Perry

and

95-01255

Name of Respondent

Atlanta-One, Inc.

Kevin McCarthy

John Williams

REPRESENTATION OF PARTIES

William & Barbara Perry ("Claimants") appeared and were represented by Stephan C. Williams, Esq., Walnut Creek, California.

Atlanta-One, Inc. ("Respondent Atlanta-One") and Kevin McCarthy ("Respondent McCarthy") did not appear, but were represented by Thom Blodgett, Esq., Atlanta-One, Inc., Costa Mesa, California.

John Williams ("Respondent Williams") did not appear and was not otherwise represented at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about March 14, 1995. Submission Agreement of Claimants William & Barbara Perry was signed on February 8, 1995.

Response to the Statement of Claim was filed by Kevin McCarthy on behalf of Respondents Atlanta-One, Inc., Kevin McCarthy and John Williams on or about May 19, 1995, challenging jurisdiction to arbitrate this matter under NASD's Code of Arbitration Procedure.

HEARING INFORMATION

The hearing was held on February 8, 1996 in Denver, Colorado, for a total of two (2) sessions.

Blodgett entered a special appearance on behalf of Atlanta-One and McCarthy to argue their jurisdictional challenge on the grounds that (a) Claimants entered into a Limited Partnership with McCarthy in his individual capacity and not as an agent of Atlanta-One, and (b) neither Atlanta-One nor the Limited Partnership entered into any agreement with Claimants to arbitrate.

Blodgett argued, further, that McCarthy's May 19, 1995, letter was not intended as an Answer on behalf of any Respondent, but was intended only to challenge NASD's jurisdiction.

Blodgett did fully participate in the hearing and supplied evidence at the Panel's request, without prejudice to his position concerning jurisdiction.

CASE SUMMARY

Claimants alleged that in May, 1994, Respondent John Williams solicited them to invest in "Money Partners" and "Trading Partners" both limited partnerships created by Respondent Atlanta-One, Inc. Claimants alleged that they agreed to invest \$20,000 in "Trading Partners." Specifically, Claimants alleged that Respondents intentionally and fraudulently diverted \$20,000 of their money which was specifically deposited and designated for "Trading Partners" to something called "Prepared Safety" in which Claimants had declined to invest. By check dated October 27, 1994, McCarthy returned \$5,000 to Mr. Perry, but has failed or refused to return the remaining amount invested plus 18% interest as promised by McCarthy on or about August 1, 1994.

RELIEF REQUESTED

Claimant requested an award in the amount of \$15,000 for special damages, plus interest; \$200,000 for emotional distress; punitive damages in the amount of at least \$100,000; and attorneys' fees in the amount of \$20,000.

OTHER ISSUES CONSIDERED & DECIDED

The Motion presented on behalf of Respondents challenging jurisdiction was considered and denied by the undersigned arbitrators, finding it to be without merit. No evidence was presented to cause the Panel to change its ruling that it does have jurisdiction in this matter.

Respondents Atlanta-One, Inc., and Kevin McCarthy did not file with the NASD properly executed submissions to arbitration, but are required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent John Williams has been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the

"Code"). The undersigned arbitrators have also determined that Respondent John Williams had received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.

Respondent John Williams did not file with the NASD properly executed submissions to arbitration but is required to submit to arbitration pursuant to §12 of the Code and is also bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in 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 original(s) 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 Atlanta-One, Inc., Kevin McCarthy and John Williams shall be and hereby are jointly and severally liable for and shall pay to the Claimants William & Barbara Perry the sum of **fifteen thousand dollars (\$15,000)** actual damages, plus 18% interest from August 1, 1994, when McCarthy assured Mr. Perry that his money would be returned to him with that rate of interest. By receipt of this award Claimants have no rights or obligations under any purported transaction entered into with Respondents Atlanta-One, Inc., Kevin McCarthy and John Williams, individually or jointly.
2. The claims for emotional distress and attorneys' fees shall be and hereby are denied in their entirety.
3. Respondents Atlanta-One, Inc., Kevin McCarthy and John Williams shall be and hereby are jointly and severally liable for and shall pay to the Claimants William & Barbara Perry the sum of **fifteen thousand dollars (\$15,000)** as punitive damages. In making this award of punitive damages, the undersigned arbitrators find and conclude that Respondents actions constitute gross or wanton fraud, i.e. misuse of customer funds and unauthorized transactions, and reckless and callous disregard or indifference to Claimants' rights.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 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 \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant William & Barbara Perry. Respondents Atlanta-One, Inc., Kevin McCarthy and John Williams shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$750 as the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall assess the non-refundable member surcharge in the amount of \$350. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ James J. Cronin, Esq.

James J. Cronin, Esq.
Public Arbitrator, Presiding Chair

March 25, 1996

/s/ John H. Barton

John H. Barton
Public Arbitrator

March 21, 1996

/s/ Jeffrey A. Schaeffer

Jeffrey A. Schaefer
Industry Arbitrator

March 25, 1996