

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lonnie D. Phillips

95-01603

Name of Respondents

David Gray
Edward McKay

REPRESENTATION

Claimant Lonnie D. Phillips ("Claimant") appeared pro se

Respondent David Gray ("Gray") did not appear for the hearing

Respondent Edward McKay ("McKay") did not appear for the hearing

CASE INFORMATION

The Statement of Claim was filed March 30, 1995

Claimant's Submission Agreement was signed on March 27, 1995

The Joint Statement of Answer filed by Gray and McKay (collectively "Respondents") on June 2, 1995

Gray did not submit a Uniform Submission Agreement

McKay did not submit a Uniform Submission Agreement

HEARING INFORMATION

Hearing Dates/Sessions: March 29, 1996/two sessions
April 8, 1996/one session

Hearing Location: Omni Richmond Hotel
Richmond, VA

CASE SUMMARY

Claimant alleged, among other things, that on July 14, 1994 David Gray, employed by Securities Planners, Inc. purchased 1000 shares of Dr. Pepper/7UP stock ("7UP") for Claimant with Claimant's approval. Claimant alleged that Gray sold the 1000 shares of 7UP without Claimant's authorization on September 14, 1994. Gray then purchased 4,600 shares of Robotics Systems & Technology ("RST") at a cost of \$21,914.85. Claimant alleged that Gray called Claimant and only after the transactions had taken place did Gray call Claimant to let him know what had transpired. Claimant alleged that on October 13, 1994, Gray purchased another 500 shares of RST without Claimant's authorization. Claimant alleged that Claimant

did not know of this transaction until Claimant received his Monthly Statement indicated a charge of \$1,564.85. Claimant alleged that the total for two (2) RST transactions equals \$23,479.70. Claimant alleged that on October 25, 1994 Robotics Systems Technology changed its name to Concord International Group and on December 29, 1994 the 5100 shares of RST were sold for \$2,629.85. Claimant alleged that the 7UP shares were purchased for \$22,979.85 and sold for \$22,309.40 for an initial loss of \$670.49. In addition, Claimant alleged that 7UP has since risen in value to \$33.00 a share which would be \$33,000.00 for the 1000 shares that were sold without Claimant's authorization.

Claimant alleged that on December 3, 1994 Claimant sent a letter to Securities Planners, Inc. Compliance Department informing them of the unauthorized transactions and misrepresentations. Claimant alleged that he requested that the transactions be rescinded. Claimant alleged that a second letter was sent to McKay, President of Securities Planners, Inc., requesting that the unauthorized transactions be rescinded. Claimant alleged that he received no response from McKay. Claimant alleged that McKay failed to properly supervise Gray in the management of Claimant's account. Claimant alleged that in early January 1995 Gray asked Claimant if he could have until the end of February 1995 to get the assets back into the account. Claimant alleged that the signatures on the Customer Suitability Statements in Respondents' possession are not Claimant's signatures. Claimant alleged that since that conversation Claimant has not heard a word from either Respondent. Claimant alleged that Respondents are liable for the damage which Claimant suffered.

Respondents, in their joint Statement of Answer, denied all allegations of wrong doing. McKay maintained that he never had any personal contact or telephone conversations with Claimant. McKay maintained that Gray was properly supervised at all times in the management of Claimant's account. Gray maintained that he assumed management of Claimant's account upon the departure of another account manager. Gray maintained that Claimant's portfolio contained not only New York Stock Exchange stocks but also speculative, growth and initial public offerings. Gray maintained that Gray recommended RST to Claimant as Claimant had other NASDAQ Bulletin Board securities in Claimant's portfolio. Gray maintained that Gray attempted to explain the speculative nature of securities on the NASDAQ Bulletin Board such as RST. Gray maintained that Claimant interrupted Gray to inform him that Claimant understood the "ins" and "outs" of the speculative market and that Claimant was an experienced investor. Gray maintained that Claimant completed and signed a Customer Suitability Statement which is required by the SEC prior to transactions involving securities on the Bulletin Board. Respondents maintained that all purchases were authorized. Respondents maintained that any losses suffered by Claimant were the result of Claimant's own decisions and the fluctuations of the market.

RELIEF REQUESTED

Claimant requested \$33,000.00; Punitive Damages of \$30,000.00; as well as NASD arbitration filing fee and hearing session deposit of \$650.00.

Respondents requested in the Joint Statement of Answer that the Statement of Claim be denied in its entirety and that Claimant be assessed the costs, fees and expenses, including reasonable attorney's fees, in an amount not less than \$5,000.00.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant agreed at the hearing 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 Claimant agreed to receive a conformed copy of the Award while the originals remain on file with the NASD.

The panel determined that Respondents Gray and McKay did not file with the NASD properly executed submissions to arbitrate but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code") and filed a Joint Statement of Answer to the Statement of Claim. Therefore, Respondents are bound by the determination of the panel on all issues submitted.

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 are jointly and severally liable to and shall pay to Claimant the sum of \$20,350.32 plus nine percent (9%) per annum from the date the award is served on the parties by the NASD until the award is paid.
2. The request for punitive damages is denied.
3. Respondents are jointly and severally liable for and shall reimburse Claimant \$150.00 for the filing fee initially paid by Claimant.
4. Respondents are jointly and severally liable for and shall reimburse Claimant \$414.62 for expenses incurred in attending hearing sessions which were scheduled but not held.
5. Any and all relief not specifically addressed herein is denied.

OTHER COSTS

Respondents are jointly and severally liable for two postponement fees of \$500.00 each. Respondents shall receive credit for \$500.00 previously submitted to the NASD for the first postponement fee leaving a balance due of \$500.00.

FORUM FEES

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

3 sessions x \$500.00 = \$1,500.00

Forum Fees are assessed jointly and severally against Respondents. Respondents are jointly and severally liable to and shall reimburse to Claimant the sum of \$500.00 for the hearing session deposit Claimant previously filed with the NASD. Therefore, Respondents have a joint and several net assessment for forum fees due to the NASD of \$1,000.00.

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

DATE

4/10/96

CONCURRING ARBITRATORS' SIGNATURES



Arnald B. Crews, Presiding
Public Arbitrator

Robert L. Dennis
Public Arbitrator

William C. Boinest
Industry Arbitrator

Date Decision Served by NASD: April 25, 1996

OTHER COSTS

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Arnald B. Crews, Presiding
Public Arbitrator

4-18-96

Robert L. Dennis
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Public Arbitrator

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CONCURRING ARBITRATORS' SIGNATURES

Arnald B. Crews, Presiding
Public Arbitrator

Robert L. Dennis
Public Arbitrator

4.22.96

William C. Boinest
William C. Boinest
Industry Arbitrator

Date Decision Served by NASD: April 25, 1996