

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

<u>Name of Claimant</u>	Consolidated Award
Henry C. Wheelwright c/f Emily Watson Wheelwright	95-01631
Lee Adams Wheelwright and Henry C. Wheelwright	95-01633
Henry C. Wheelwright c/f Mark C. Wheelwright	95-01635

Name of Respondent

Michael C. Nolan

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 4, 1995, Claimants Henry C. Wheelwright c/f Emily Watson Wheelwright et.al., who appeared Pro Se, alleged that Respondent Michael C. Nolan ("Nolan") while employed by Bear Stearns & Co., Inc., was instructed in November, 1994, to transfer their account from the firm to Meridian, Dunhill & Co., and on December 15, 1994, Claimants reiterated these instructions via facsimile letter. Claimants further alleged that on December 13, 1994, Nolan, who had full discretionary power to trade in the disputed accounts, sold 750 shares of Canstar Sports Inc. ("Canstar") at 11 15/16 instead of transferring the stock as instructed. Claimants contended that on December 14, 1994, Canstar share price went to 19 causing a loss. Claimants alleged that Nolan was uncooperative and unprofessional in failing to provide certain information regarding the above account transfer to an administration officer of the Meridian firm. The Claimants further alleged that as a result of the above, they have suffered losses for which the Respondent should be held liable.

Respondent Michael C. Nolan, through his counsel, William C. Mallery, Esq., of Bear Stearns & Co., Inc., of New York, NY., maintained that Claimants were involved and demanding investors, with whom Nolan discussed each transaction for any of Claimants' accounts, including the disputed sale of Canstar shares on December 13, 1994. Respondent further maintained that upon learning of Claimants' desire to move 3 custodial accounts to the Meridian firm, Respondent recommended, and Claimant agreed to, the sale of certain foreign stocks (including Canstar) because Respondent was "uncomfortable with the new firm's capacity to provide adequate research or properly follow these securities." Respondent contended that Claimant did contact him on December 14, 1994 regarding the missed opportunity on the custodial accounts, but that Claimant accepted the trade when Nolan reminded him that Claimant's personal account still held 2,000 shares of Canstar at that time. Respondent further contended that subsequent to December 14, 1994, Claimant complained to Nolan's supervisor, and said complaint was rejected because, among other things, Claimant Henry C. Wheelwright himself had authorized and ratified the disputed trade. Respondent maintained that as a result of the above, he should not be held liable.

**RELIEF REQUESTED**

Claimants Henry C. Wheelwright c/f Emily Watson Wheelwright, requested \$5,200.00 in actual damages, plus \$4,800.00 in punitive damages.

Claimants Lee Adams Wheelwright and Henry C. Wheelwright, requested \$5,200.00 in actual damages, plus \$4,800.00 in punitive damages.

Claimants Henry C. Wheelwright c/f Mark C. Wheelwright, also requested \$5,200.00 in actual damages, plus \$4,800.00 in punitive damages.

Respondent Michael C. Nolan, requested that the claims of the Claimants be dismissed in their entirety.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marvin Elster, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Henry C. Wheelwright c/f Emily Watson Wheelwright, on March 29, 1995, and by the Respondent Michael C. Nolan, on July 24, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Henry C. Wheelwright c/f Emily Watson Wheelwright, Lee Adams Wheelwright and Henry C. Wheelwright, and Henry C. Wheelwright c/f Mark C. Wheelwright, against Respondent Michael C. Nolan, are dismissed in their entirety.
2. The Claimants' request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by each of the Claimants, Henry C. Wheelwright c/f Emily Watson Wheelwright, et al., shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **MARVIN ELSTER, 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.

A handwritten signature in black ink, appearing to be 'M. Elster', written over a horizontal line.

**MARVIN ELSTER, ESQ.**

**DATE OF DECISION:**

**February 23, 1996**