

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

**Kim Feddick, and
Mesa Produce, Inc. /Pension Plan & Trust,
Claimants,**

v.

**Consolidated No.s 95-01677
95-01675**

**Norcross Securities Inc., and
Stuart O. Bates,**

Respondents.

REPRESENTATION OF PARTIES

Kim Feddick ("Feddick"), Mesa Produce, Inc. ("MPI"), and Mesa Produce Brokers Inc. Profit Sharing Plan & Trust ("MPBI") (collectively referred to as "Claimants") were represented by Kim Feddick.

Norcross Securities, Inc. ("NSI") and Stuart O. bates ("Bates") (collectively referred to as "Respondents") were represented by Paul J. Roshka, Esq., of Roshka, Heyman & DeWulf, PLC, Phoenix, Arizona.

CASE INFORMATION

Feddick's and MPBI's Statement of Claim in case number 95-01677 was filed on or about April 3, 1995. Feddick's and MPBI's Submission Agreement was signed on May 9, 1995. MPI's Statement of Claim in case number 95-01675 was filed on or about April 3, 1995. MPI's Submission Agreement was signed on March 31, 1995.

Respondents' Statement of Answer for case number 95-01677 was filed on or about October 25, 1995. Respondents' Statement of Answer for case number 95-01675 was filed on or about April 27, 1995. NSI's Submission Agreement was signed on April 17, 1995.

HEARING INFORMATION

Telephonic pre-hearing conferences were held on October 17, 1995 and November 30, 1995 for one (1) session each day, totaling two (2) sessions.

The hearing was held on April 18, 1996 in Scottsdale, Arizona for a total of two (2) sessions.

CASE SUMMARY

In the Statement of Claim for case number 95-01677 and 95-01675, Feddick, on behalf of the Claimants, alleged that: Bates did not disclose the potential risk of the Kensbrook Development Corporation stock ("KBDVF"), listed on the Canadian Exchange, nor did he provide a prospectus or risk disclosure; bates represented KBDVF as a manufacturer of battery rechargers, when the company was engaged only in research and development of battery rechargers and has no inventory or assets; bates solicited his investment through innuendos and misrepresentations of his knowledge of this company and their activities; Bates represented that this transaction must take place immediately, thus leaving little time for consideration; and had Bates truthfully represented the activities of the company and their lack of assets, he would not have made the investment.

Unless otherwise admitted in their Answers to the Statements of Claim, Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted the following affirmative defenses: Claimants have failed to state a claim upon which relief can be granted or an award issued; the claims are barred by estoppel; the claims are barred by contributory negligence; the transactions were unsolicited; and the claims are barred by assumption of risk.

RELIEF REQUESTED

Feddick requested an award, against Respondents, in the amount of \$18,906.50. MPBI requested an award, against Respondents, in the amount of \$5,261.50. MPI requested an award, against Respondents, in the amount of \$5,261.50.

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

OTHER ISSUES CONSIDERED & DECIDED

NSI filed a Motion to Dismiss the Statement of Claim in file number 95-01677. A pre-hearing conference was held concerning the motion. At the pre-hearing conference, Feddick indicated that the caption for case numbers 95-01677 and 95-01675, if consolidated, should be, "Kim Feddick and Mesa Produce, Inc./Pension Plan & Trust." After reviewing the pleadings, the motion and response, hearing argument from the parties, and deliberation, the arbitrators denied the motion. However, the panel did grant the alternative request that case numbers 95-01677 and 95-01675.

On or about April 10, 1996, Feddick filed a Motion to Consolidate the above-referenced cases with Earl Feddick's arbitration claim (NASD case number 96-01040). After review of the motion and the response, and deliberation, the arbitrators denied Feddick's motion.

Respondents did not file with the NASD a 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 having answered the claim, appeared and testified at the hearing and are bound by the determination of the arbitration panel on all issues submitted.

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:

Claimants' claims are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) regular sessions x \$400 and two (2) pre-hearing sessions x \$300.00 = \$1,400 in forum fees. Pursuant to §43(b) of the Code, 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 Code, the NASD shall retain the non-refundable filing fee in the amount of \$100 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by Claimants.

Pursuant to §43(c) of the Code, for case number 95-01675, the NASD shall retain the non-refundable filing fee in the amount of \$75 and shall retain as forum fees the hearing session deposit in the amount of \$200 previously deposited with the NASD by the MPI.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 assessed in case number 95-01677 and shall retain the member surcharge fee in the amount of \$100 assessed in case number 95-01675 previously paid by NSI.

Additional forum fees in the amount of \$100 are assessed against the Claimants.

Additional forum fees in the amount of \$700 are assessed against the Respondents.

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

Dated: _____

Robert Daniel Boone
Robert Daniel Boone
Public Arbitrator, Presiding Chair

s/s

April 23, 1996

Robert C. Hubbard
Robert C. Hubbard
Public Arbitrator

s/s

April 24, 1996

Sarah Catherine Whitmore
Sarah Catherine Whitmore
Industry Arbitrator

s/s

April 22, 1996