

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William Wolfe

95-01759

Name of Respondents

Empire Securities, Inc.
Randall J. McNiece
Charles A. Anderson
Randall Strack

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 31, 1995, Claimant William Wolfe, through his representative, Brian K. Lowe of Investors Arbitration Services, Inc., located in Woodland Hills, CA., alleged that Respondent Empire Securities, Inc. ("Empire") through its representatives, Respondents Charles A. Anderson ("Anderson"), Ronald Strack ("Strack"), and Randall J. McNiece ("McNiece"), made willful and deliberate misrepresentations and omissions of material fact which fraudulently induced him to purchase an unsuitable investment in Down Rite debentures. Claimant further alleged that during March of 1991, Empire undertook to act as the investment banker for Down Rite, Inc. and that he purchased \$10,000.00 of debenture notes in Down Rite through Anderson and Empire. Claimant contended that the debentures promised to pay back the entire invested principal ten years from the date of the debenture, plus interest. Claimant further contended that Down Rite subsequently filed for bankruptcy protection and, at that time, he discovered that there were issues regarding difficulties in obtaining funding, conflicts with the company's bankers, and a growing dispute between the company and its sole financial backer which were not previously disclosed in the "disclosure document" provided to him. Claimant alleged that Anderson, McNiece and Strack were all owners of Down Rite, and made no disclosure of any potential conflict of interest created by their ownership. As a result of the above, Claimant alleged that he has suffered a loss for which the Respondents should be held liable.

Respondents Empire Securities, Inc., Charles A. Anderson, Ronald Strack and Randall J. McNiece, through their representative, Douglas J. Siddoway, Esq. of Randall & Danskin, P.S., located in Spokane, Washington, maintained that following an appropriate due diligence process, Empire offered Down Rite convertible debentures only to those investors, including Claimant, who could afford the loss of their entire investment. Respondents further maintained that Wolfe personally visited with the principals of Down Rite prior to purchasing the debentures and fully understood the company's financial and operating condition, its history and its prospects. Respondents contended that when Down Rite began to default,

Empire wrote to investors to seek the investors' concurrence in its course of action and received the concurrence of Claimant. Respondent further contended that Empire kept investors apprised of its own activities on their behalf and was happy to respond with what it knew to any debenture holder inquiries even though it was under no duty to investigate and report on the status of Down Rite. Respondents maintained that Claimant is a sophisticated and financially astute individual, and was provided with the material information necessary to make his investment decision. As a result of the above, Respondents maintained that they should not be held liable.

RELIEF REQUESTED

Claimant William Wolfe, requested \$10,000 in actual damages, plus interest, attorney fees, and punitive damages.

Respondents Empire Securities, Inc., Charles A. Anderson, Ronald Strack and Randall J. McNiece, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John A. Bender, Jr., Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant William Wolfe, on March 31, 1995, and by the Respondent Ronald Strack, on June 9, 1995, and by Respondent Empire Securities, Inc., on June 9, 1995 and not by Respondents Randall J. McNiece or Charles A. Anderson, as required by Sections 12 and 13 of the NASD, Inc. Code of Arbitration Procedure.

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 Claimant William Wolfe, against Respondents Empire Securities, Inc., Charles A. Anderson, Ronald Strack & Randall J. McNiece, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant William Wolfe, shall be retained by the NASD, Inc. Respondents Empire Securities, Inc., Charles A. Anderson, Ronald Strack & Randall J. McNiece, shall pay to the Claimant William Wolfe, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

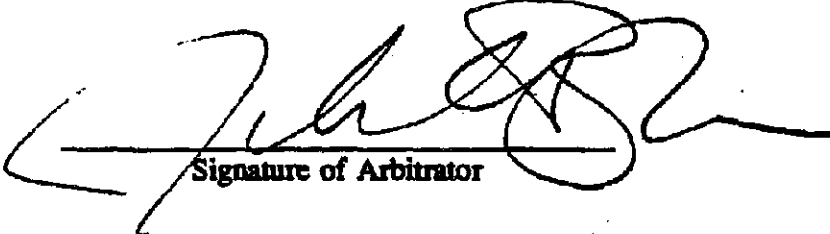
STATE OF

}
}
}

ss:

COUNTY OF

I, John A. Bender, 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.



Signature of Arbitrator

DATE OF DECISION: December 26, 1995