

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the Matter of the Arbitration Between

**SCOTT BUCHAN,**

Claimant,

and

No. 95-01862

**JOHN G. KINNARD & CO., NICHOLAS AMLIE,  
WESTONKA INVESTMENTS, INC., PAT MCDONNELL  
and TIM FRIEDERICHs,**

Respondents.

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**REPRESENTATION OF PARTIES**

("Claimant") was represented by Rebecca E. Bender.

("Respondents") were represented, as follows: John G. Kinnard & Co. by F. Chet Taylor; Nicholas Amlie by J. Patrick McDavitt; Tim Friederichs by Norman P. Friederichs and Pat McDonnell represented himself.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 3, 1995. The Submission Agreement of Claimant was signed on that date by Claimant.

The Statement of Answer of Respondent John G. Kinnard & Co. was filed on or about June 26, 1995 and its Submission Agreement was executed on or about June 23, 1995.

The Statement of Answer of Respondent Nicholas Amlie was filed on or about June 7, 1995 and his Submission Agreement was executed on or about the same date.

The Statement of Answer of Respondent Nicholas Amlie was filed on or about June 7, 1995 and his Submission Agreement was executed on or about the same date.

The Statement of Answer of Respondent Tim Friederichs was filed on or about January 8, 1996 and his Submission Agreement was executed on or about the same date.

The Statement of Answer of Respondent Patrick E. McDonnell was filed on or about June 20, 1995 and his Submission Agreement was executed on or about the same date.

No Statement of Answer or Submission Agreement was received by the NASD to date from Respondent Westonka Investments, Inc.

#### HEARING INFORMATION

A pre-hearing conference was held on January 8, 1996.

In February 1996, it was agreed that, due to an injury to Tim Friederichs, the hearing would proceed as to Respondents John G. Kinnard & Co. and Nicholas Amlie but that the hearing would be continued to later date as to the allegations regarding Respondents Tim Friederichs and Patrick E. McDonnell.

Accordingly, additional hearing sessions occurred in February 1996 regarding Respondents John G. Kinnard & Co. and Nicholas Amlie only. Thus, the dates of the hearing sessions and number of hearing sessions from each date are as follows: January 10, 1996 - 3; January 11, 1996 - 3; January 12, 1996 - 2; January 19, 1996 - 2; January 20, 1996 - 2; January 21, 1996 - 2; February 24, 1996 - 2; February 25, 1996 - 2, for a total of 18 sessions

to date. Of the 18 sessions, 75% have involved issues involving Claimant and Respondents John G. Kinnard & Co. and Nicholas Amlie, and 25% have involved issues regarding Respondents Tim Friederichs and Patrick E. McDonnell.

#### CASE SUMMARY

Claimant alleged that Respondents violated the federal securities laws, Minnesota securities laws and common law in soliciting Plaintiff, a person described as an unsophisticated tree trimmer, to invest in securities contrary to his express objectives, and in misrepresenting the nature of the risks inherent in those securities as well as the status of those securities. Plaintiff also alleged that he was unsuitable for these investment. Respondent, John G. Kinnard & Co., denied the allegations in the Statement of Claim, and further stated that Claimant had both prior investment experience as well as wanting to do additional investing. The firm further claimed that Claimant had more than six years of investment experience and a net worth of more than \$300,000. In essence then, the firm alleged that Claimant was an investor with prior experience and net worth sufficient for these investments, and that he was now claiming that he was unsophisticated and had an insufficient net worth for the type of trading performed by him at John G. Kinnard & Co.

Respondent, Nicholas Amlie, also denied the substantive allegations of the Statement of Claim. Respondent Amlie initially stated that he had never been associated with Westonka

Investments and had no knowledge of the Claimant's trading activity at that firm. Regarding Claimant's investments at John G. Kinnard & Co., Respondent Amlie stated that such investment losses were the result of market events beyond said Respondent's control, were part of the risks assumed by Claimant in making the investments and any losses were not caused by said Respondent. Further, said Respondent failed to mitigate his losses and retained the securities purchased in his Kinnard account, notwithstanding the subsequent decline in value of those securities.

Respondent Friederichs denied the substantive allegations in the Statement of Claim and further states that the Claimant was an experienced investor by the time Claimant opened his account through Respondent McDonnell at Westonka Investments, Inc. Said Respondent also disputes the trading philosophy and other specifics regarding the account. Lastly, said Respondent states that he was the president of Westonka Investments, Inc., was responsible for the overall management of that firm but did not have any personal involvement in authorizing or negotiating the transactions specified in the Statement of Claim. Moreover, said Respondent claimed that he did not directly or indirectly induce the act or acts constituting the transactions specified in the Statement of Claim and has always acted in good faith.

Respondent McDonnell denied all substantive allegations in the Statement of Claim. Said Respondent detailed alleged allegations to him regarding Claimant's prior trading experience

and net worth and steps taken by him in the trading of this account. Said Respondent further details his beliefs regarding the statements contained in the Statement of Claim regarding Claimant's net worth and other issues and discussed, in detail, his activities with the Claimant, as well as his history.

#### **RELIEF REQUESTED**

Claimant requests approximately \$93,000 as his out of pocket loss from Kinnard/Amlie and approximately \$97,000 as his out of pocket loss from Westonka/Friederichs/McDonnell, together with market-adjusted damages, attorneys' fees, interest, expenses, punitive damages and other relief as the hearing panel deems just and proper.

Each Respondent requests that the claimed damages be denied. Various Respondents request other damages including their attorneys fees and other damages.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has determined that each Respondent has been properly served with the Statement of Claim pursuant to §13 and §25 of the N.A.S.D. Code of Arbitration Procedure (the "Code"). The panel also determined that each Respondent 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 Westonka Investments, Inc. did not file with the N.A.S.D. a properly executed submission to arbitration and is

required to both submit to arbitration pursuant to §8 of the N.A.S.D. Code of Arbitration Procedure (the "Code") as well as filing an answer to the Statement of Claim, but failed to do so.

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 N.A.S.D.; it being noted that the Panel's decision, at this time, being determined as to John G. Kinnard & Co. and Nicholas Amlie, since the decision regarding the remaining Respondents shall be deferred until the hearing resumes and testimony is concluded as to those Respondents.

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as to John G. Kinnard & Co. and Nicholas Amlie only, as follows:

Claimant is awarded \$37,255.60 against Respondents John G. Kinnard & Co. and Nicholas Amlie, jointly and severally as to all claims made by Claimant against said Respondents. All claims for punitive damages and attorneys fees are denied in their entirety by and against all parties.

#### FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for the prehearing conference. There

were 18 sessions x \$750.00, plus a pre-hearing conference of \$300, or \$13,800.00 in forum fees. As stated previously, 75% of the hearing sessions involved matters related to the claims involving these Respondents. Therefore, the forum fees involving Respondents John G. Kinnard & Co. and Nicholas Amlie are \$10,350.00 or 75% of the total hearing fee cost. Pursuant to §44(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.

Of the \$10,350.00 in Forum Fees applicable to this portion of the case, the Panel has determined that 2/3 of the fees should be payable by the Claimant and 1/3 by Respondents, John G. Kinnard & Co. and Nicholas Amlie, jointly and severally. Thus, of the Forum Fees, Claimant shall be assessed \$6,900.00 less the \$750.00 hearing session deposit previously paid by Claimant for a total due of \$6,150.00 and Respondents John G. Kinnard & Co. and Nicholas Amlie, jointly and severally, shall be assessed \$3,450.00.

Pursuant to §44(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall **retain** the non-refundable filing fee in the amount of \$200 previously paid by Claimant, shall **retain** the surcharge imposed pursuant to §45 in the amount of \$350.00 previously paid by Respondent, and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Further, Claimant

shall immediately pay to the N.A.S.D. any and all forum fees still due and owing pursuant to this award. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ James L. Schwartz

6/18/96

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James L. Schwartz  
Presiding Chair

/s/ Edward C. Oliver

6/25/96

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Edward C. Oliver  
Arbitrator

/s/ Robert R. Biglow

6-25-96

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Robert R. Biglow  
Arbitrator

Date of Service by the NASD: July 10, 1996



## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Scott Buchan,

Claimant,

v.

No. 95-01862

John G. Kinnard & Co., Inc.,  
Brandt N. Amlie, Thomas J. Mulvaney,  
Westonka Investments, Inc.,  
Timothy J. Friederichs, and  
Patrick E. McDonnell,

Respondents.

## **REPRESENTATION OF PARTIES**

Claimant Scott Buchan was represented by Rebecca E. Bender, Esquire, of Rebecca E. Bender & Associates, P.A., located in Minneapolis, Minnesota.

Respondents John G. Kinnard & Co., Inc. and Thomas J. Mulvaney was represented by F. Chet Taylor, Esquire, of John G. Kinnard and Co., Inc., located in Minneapolis, Minnesota.

Respondent Brandt N. Amlie was represented by J. Patrick McDavitt, Esquire, of Briggs and Morgan, located in Minneapolis, Minnesota.

Respondent Timothy J. Friederichs was represented by Norman P. Freidrichs, Esquire, of Friederichs Law Firm, located in Minneapolis, Minnesota.

Respondent Patrick E. McDonnell appeared pro se.

### **CASE INFORMATION**

Claimant Scott Buchan's Statement of Claim was filed on or about April 18, 1995. Claimant Scott Buchan's Submission Agreement was signed on April 3, 1995.

Respondents John G. Kinnard & Co., Inc. and F. Chet Taylor's Statement of Answer was filed on or about April 27, 1995. Respondent John G. Kinnard & Co., Inc.'s Submission Agreement was signed on June 23, 1995.

**Respondent Brandt N. Amlie's Statement of Answer was filed on or about May 1, 1995.**

Respondent Timothy J. Friederichs' Statement of Answer was filed on or about December 14, 1995.

Respondent Patrick E. McDonnell's Statement of Answer was filed on or about May 16, 1995. Respondent Patrick E. McDonnell's Statement of Answer was signed on June 27, 1995.

## HEARING INFORMATION

The hearing was held on:                      October 15, 1996, for two (2) sessions; and  
October 16, 1996, for two (2) sessions.

**The hearing was held in Minneapolis, Minnesota.**

Hearing sessions began in January 1996. In February 1996, it was agreed that, due to an injury to respondent Timothy J. Friederichs, the hearing would proceed as to respondents John G. Kinnard & Co., Inc. and Brandt N. Amlie, but that the hearing would be continued to a later date as to the allegations regarding respondents Westonka Investments, Inc., Timothy J. Friederichs, and Patrick E. McDonnell. Accordingly, additional hearing sessions occurred in February 1996 regarding respondents John G. Kinnard & Co., Inc. and Brandt N. Amlie only.

## CASE SUMMARY

Claimant Scott Buchan ("Claimant") alleged that respondents John G. Kinnard & Co., Inc., Brandt N. Amlie, Thomas J. Mulvaney, Westonka Investments, Inc., Timothy J. Friederichs, and Patrick E. McDonnell ("Respondents") violated federal securities laws, Minnesota securities laws and common law in soliciting him to invest in securities contrary to his express objectives, and in misrepresenting the nature of the risks inherent in those securities as well as the status of those securities. Claimant also alleged Respondents made unsuitable trades on his account.

Respondents John G. Kinnard & Co., Inc. and Thomas J. Mulvaney denied the allegations in the Statement of Claim, and further stated that Claimant had more than six years of investment experience and a net worth of more than \$300,000.

Respondent Brandt N. Amlie ("Mr. Amlie") also denied the substantive allegations in the Statement of Claim. Mr. Amlie stated that he had never been associated with Westonka Investments, Inc. and had no knowledge of the Claimant's trading activity at that firm. Regarding Claimant's investments at John G. Kinnard & Co., Inc., Mr. Amlie stated that such investment losses were the result of market events beyond his control, were part of the risks assumed by Claimant in making the investments, and any losses were not caused by Mr. Amlie. Furthermore, Mr. Amlie contended that Claimant failed to mitigate his losses by retaining the securities purchased in his account when the value of those securities were declining in value.

Respondent Timothy J. Friederichs ("Mr. Friederichs") denied the substantive allegations in the Statement of Claim and further stated that the Claimant was an experienced investor by the time Claimant opened his account through respondent Patrick E. McDonnell at Westonka Investments, Inc. ("Westonka"). Mr. Friederichs also disputed the trading philosophy and other specifics regarding the account complained of in the Statement of Claim. Mr. Friederichs denied any personal involvement in authorizing or negotiating the transactions specified in the Statement of Claim, and denied that he directly or indirectly induced the act or acts constituting the transactions specified in the Statement of Claim; he also stated that he has always acted in good faith.

Respondent Patrick E. McDonnell ("Mr. McDonnell") denied all substantive allegations in the Statement of Claim. Mr. McDonnell also identified Claimant's prior trading experience and net worth, as well as the steps taken by Claimant in the trading in his account.

#### **RELIEF REQUESTED**

Claimant Scott Buchan requested: an award against respondents John G. Kinnard & Co., Inc. and Brandt N. Amlie in the amount of \$93,000 for compensatory damage; an award against respondents Westonka Investments, Inc., Timothy J. Friederichs, and Patrick E. McDonnell in the amount of \$97,000 for compensatory damages; an award for market-adjusted damages, attorney fees, interest, expenses, and punitive damages.

Each respondent requested that the claims asserted against them be denied in their entirety and various respondents requested other damages including attorney fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Westonka has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure ("the Code"). The undersigned arbitrators have also determined that Respondent Westonka had received due notice of the hearing as required under §10318 of the Code.

Respondent Westonka Investments, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure and is bound by the determination of the arbitration 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 originals remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination, as to respondents Westonka Investments, Inc., Timothy J. Friederichs, and Patrick E. McDonnell only, as follows:

1. The Statement of Claim is denied with respect to respondents Westonka Investments, Inc., Timothy J. Friederichs, and Patrick E. McDonnell; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) hearing sessions x \$750 = \$3,000 in forum fees. Pursuant to §10332(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. In addition, 25% of the forum fees from the first portion of this case, which were \$3,450, are apportioned to this portion of the case. Thus, total forum fees are \$6,450.

Claimant Scott Buchan is liable for and shall pay forum fees in the amount of \$2,150 (=  $\frac{1}{3}$ \$6,450 total forum fees).

Respondent Timothy J. Friederichs is liable for and shall pay forum fees in the amount of \$2,150 (=  $\frac{1}{3}$ \$6,450 total forum fees).

Respondent Patrick E. McDonnell is liable for and shall pay forum fees in the amount of \$2,150 (=  $\frac{1}{3}$ \$6,450 total forum fees).

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ James L. Schwartz

3/26/97

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James L. Schwartz, Esquire  
Public Arbitrator, Presiding Chair

/s/ Edward C. Oliver

3/27/97

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Edward C. Oliver  
Public Arbitrator

/s/ Robert R. Biglow

3/25/97

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Robert R. Biglow, Esquire  
Industry Arbitrator