

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank Frampton

95-01958

Name of Respondents

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

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 21, 1995, Claimant, Frank Frampton, who appeared Pro Se, alleged that Respondents, Charles A. Anderson ("Anderson"), Ronald Strack ("Strack"), Randall J. McNiece ("McNiece") and Empire Securities, Inc. ("Empire"), made misrepresentations, omissions, breached their fiduciary duty and were negligent in handling his account. Claimant further alleged that in or around March of 1991, Respondent Empire undertook to act as investment banker for a company called Down Rite, Inc. ("Down Rite") in its efforts to raise \$100,000.00. Claimant contended that in January of 1992, he purchased \$10,000.00 of debenture notes in Down Rite through Respondents Anderson and Empire. Claimant further contended that these debentures were sold by use of a "disclosure document" purporting to serve as a private placement memorandum. Claimant alleged that he was told, by Anderson, that the patents serving as collateral for the debentures were worth \$300,000.00 - \$500,000.00. Claimant further alleged that the debentures promised to pay back the entire invested principal ten years from the date of the debenture plus 10% annual interest payable each May. Claimant contended that Down Rite and at least one of its principals subsequently filed for federal bankruptcy protection which brought to light certain prior developments in Down Rite's corporate history of which Claimant had never been aware as well as deficiencies in Empire's due diligence process. As a result of the above, Claimant alleged that he has suffered a loss for which the Respondents should be held liable.

Respondents, Charles A. Anderson, Ronald Strack, Randall J. McNiece and Empire Securities, Inc., through their representative, Douglas J. Siddoway, Esq., of Randall & Danskin, P.S., located in Spokane, WA, maintained that, following an appropriate due diligence process, Down Rite's convertible debentures, secured by the patent, were offered by Empire only to those investors, including the Claimant, who could afford the loss of their entire investment. Respondents further maintained that because the offering was such a small one, effectively ruling out preparation of a costly offering document, the offering was planned and designed with disclosure to be made by Down Rite's principals on-site, with those principals affirmatively offering information for review by investors and responding to investor questions. Respondents contended that Claimant's concern that he was not being notified of

developments with Down Rite appears to be a concern that should be addressed to Down Rite as Respondents were under no duty to investigate and report on the status of Down Rite. Respondents further contended that they are not insurers's that all aspects of an issuer's history will in fact be revealed to it in the course of its good faith conduct of due diligence. As a result of the above, Respondents maintained that they should not be held liable.

RELIEF REQUESTED

Claimant, Frank Frampton, requested \$10,000.00 in actual damages, plus interest, attorney's fees and punitive damages.

Respondents, Charles A. Anderson, Ronald Strack, Randall J. McNiece and Empire Securities, Inc., 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, Katherine Hendricks, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant, Frank Frampton, on March 23, 1995, and by the Respondent, Empire Securities, Inc., on June 9, 1995, and by Respondent, Ronald Strack, on June 9, 1995, and not by Respondents, Charles A. Anderson, and Randall J. McNiece, as required by Sections 12 and 13 of the NASD 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. Respondent, Empire Securities, Inc., is liable and shall pay to the Claimant, Frank Frampton, \$10,000.00 in actual damages.
2. The claims of the Claimant, Frank Frampton, against Respondents, Charles A. Anderson, Ronald Strack and Randall J. McNiece, are dismissed in their entirety.
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 the Claimant, Frank Frampton, shall be retained by the NASD, Inc. Respondent, Empire Securities, Inc., is liable and shall pay to the Claimant, Frank Frampton, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

STATE OF *Washington*

} ss:
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COUNTY OF *King*

I, *Katherine Hendricks*, 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.

Katherine Hendricks
Signature of Arbitrator

DATE OF DECISION: November 2, 1995