

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert C. Wagner

95-03319

Name of Respondents

Joseph J. Mandaro
Investors Associates, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 11, 1995, Claimant Robert C. Wagner, who appeared Pro Se, alleged that he held account #IRT-010159-1 with Respondent Investors Associates, Inc. ("IAI") and that its representative, Respondent Joseph J. Mandaro ("Mandaro") strongly recommended that he purchase 100 shares of Dr. Pepper ("DP") in January of 1995 and 500 shares of HMWKU in February of 1995 which he followed to his detriment. Claimant alleged that prior to his purchase of the DP shares, Mandaro told him that Cadbury had offered a higher price for the shares than that which subsequent new releases indicate was offered by Cadbury. Claimant further alleged that Mandaro misrepresented the commission which he intended to charge for the transaction. Claimant contended that he complained about the DP transaction so Mandaro, in order to 'make it up', offered him shares and warrants in an initial public offering, Advanced Voice Technologies, and told him the NASDAQ ticker symbol was HMWKU. Claimant further contended that he received the confirmation slip which showed the ticker symbol of the purchase as HMWK so he contacted Mandaro who said the symbol U stood for "units" and that the confirmation was correct because Claimant had purchased "shares" and not "units." Claimant alleged that he requested that all his holdings be immediately liquidated but this was not complied with for several days to his further detriment. Claimant further alleged that IAI is holding \$982.90 in escrow for Federal taxes despite being forwarded a W-9. Claimant contended that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents Investors Associates, Inc. and Joseph J. Mandaro, through their representative, M. David Sayid, Esq., of Sayid and Associates, of Hackensack, NJ., maintained that in connection with the DP transaction, Claimant was informed analysts and rumors on the street looked for a \$40.00 per share buy-out by Cadbury. Respondents further maintained that even if Claimant is correct, he has not stated a cause of action upon which relief can be granted. Respondents contended that Mandaro told Claimant that Advanced Voice Technologies had three securities which were going to be underwritten: units, common stock and warrants. Respondents further contended that Claimant received a pre-confirmation letter which indicated HMWK was to be purchased. Respondents maintained that Claimant failed to return an executed W-9 so Prudential Securities, Inc., IAI's clearing firm, sent the federal withholding taxes directly to the Internal Revenue Service and, that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimant Robert C. Wagner, requested \$3,141.75 in actual damages.

Respondents Investors Associates, Inc. and Joseph J. Mandaro, 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, Daniel E. Bivins, III, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Robert C. Wagner, on June 26, 1995, and by the Respondent Investors Associates, Inc., on September 11, 1995, and not by Respondent Joseph J. Mandaro, as required by Sections 12 and 13 of 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. Respondents Investors Associates, Inc. and Joseph J. Mandaro, are jointly and severally liable, and shall pay to the Claimant Robert C. Wagner, \$3,137.86 in actual damages.
2. Respondents Investors Associates, Inc. and Joseph J. Mandaro, are jointly and severally liable, and shall pay to the Claimant Robert C. Wagner, simple interest at the rate of 7% from February 14, 1995-until payment of the award.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robert C. Wagner, shall be retained by the NASD, Inc. The Respondents Investors Associates, Inc. and Joseph J. Mandaro, are jointly and severally liable, and shall pay to the Claimant Robert C. Wagner, \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, DANIEL E. BIVINS, III, 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.



Daniel E. Bivins, III

DATE OF DECISION: February 15, 1996