

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John Dordan Duffy

95-03681

Name of Respondents

Value Investing Partners, Inc.

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**REPRESENTATION**

Claimant John Dordan Duffy ("claimant") appeared pro se.

For respondent Value Investing Partners, Inc. ("respondent") appeared Lawrence S. Hirsch, Esq. of Reid & Priest LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed: July 28, 1995.

Claimant's Submission Agreement signed on: July 27, 1995.

Statement of Answer filed by Respondent on: October 5, 1995.

Respondent's Submission Agreement signed on: October 5, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions: April 24, 1996 - One Session

The hearing was held at the offices of the National Association of Securities, Inc. located in New York, New York.

**CASE SUMMARY**

Claimant alleged that, on September 25, 1992, he was hired by respondent to perform the duties of compliance director, bookkeeper, back office trouble-shooter and general office factotum. Claimant further alleged that, in April of 1993, he was given the position of Head of Trading

and that he was to continue receiving his then current compensation until the July production month, and, thereafter, in lieu of a guaranteed salary, he would receive a participation in respondent's production. Claimant also alleged that a handwritten "compensation scheme" was prepared by respondent's president which reflected the monetary arrangement he was offered.

Claimant alleged that respondent recommended and made a market in Speizman Industries and participated in a secondary offering of this security. Claimant also alleged that this business was done through respondent's Syndicate Account and that under the "compensation scheme" he was entitled to receive 30% of the gross commissions on such syndications. Claimant further alleged that he and respondent's president orally modified the "compensation scheme" and that under the new scheme, in lieu of 30%, his commission would be the normal formula of 7% European and 11% U.S. payout on all business syndicate, brokerage, underwriting, with the exception of his retail accounts which would remain at 30%.

Claimant alleged that, in June of 1994, respondent underwrote about \$26,715,000.00 of stock and convertible debentures of Park Ohio Industries ("Park") and that, under the "new compensation scheme", he should have received commissions of \$63,700.00 on the European based Park business and in excess of \$46,832.50 on the U.S. based Park business. Further, claimant alleged that respondent later engaged in other underwritings for Specialty Retail Group, Lynton Group and Aeroflex, Inc. and that he should have also received commissions for this European based business. Claimant asserted that, if respondent denied that the "compensation scheme" was modified orally, then he was entitled to receive commission based upon the original "compensation scheme" and that under this scheme he was owed the sum of \$152,825.00.

Claimant alleged that respondent made a market in recommended stocks in order to facilitate customer transactions and not to make trading profits. Claimant further alleged that the firm's policy was to try to end each day with the firm's trading account flat, even if that involved taking a loss of 1/8 or 1/4 of a point, but that these losses were never charge to him personally. Claimant further alleged that on a certain day he had to short 2,000 shares of Advance Ross Corporation stock in order to honor a quote, but that the short was never covered. Claimant asserted that respondent forced him to cover the position resulting in a \$5,600.00 loss, which respondent arbitrarily deducted from his paycheck.

Respondent maintained that, in March of 1993, in connection with the disappointing results of its U.S. based sales efforts, claimant's compensation was changed to a payout based solely upon claimant's own retail accounts and any syndicate business he generated. Respondent further maintained that claimant knew that syndicate business meant business which he personally brought into the firm by negotiating with syndicate managers at other investment banks to be included as either a syndicate member or selling group member on a publicly underwritten offering of securities.

Respondent maintained that the transactions listed by claimant were corporate finance transactions brought in by its investment banking department and with which claimant as head trader had no involvement. Further, respondent alleged that none of the transactions for which

claimant now seeks compensation involved respondent as a syndicate or selling group member. In addition, respondent maintained that, in the few instances when claimant succeeded in generating syndicate business, he was compensated accordingly.

Respondent maintained that claimant knew that it was not the company's policy to take any trading positions for the account of the firm and that the purpose of the firm's trading desk was to match either with the street or with other customer orders. Respondent also maintained that claimant knew that it was respondent's policy that losses for errors such as positions held overnight would be deducted from the responsible employee's compensation.

#### **RELIEF REQUESTED**

Claimant requested \$189,387.50, representing commissions due under the modified "compensation scheme" or in the alternative \$152,825.00, representing commissions due under the original "compensation scheme". Claimant further requested damages of \$5,600.00, representing the market-making loss which was charged to him personally.

Respondent requested that an award denying relief be entered and that it be awarded costs including attorney's fees.

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

At the hearing, claimant withdrew all claims, except those related to commissions due on Park Ohio and Travel Ports and the claim for monies withheld from commissions for the AROS transactions.

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 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:

1. All claims against respondent be and hereby are dismissed in their entirety.
2. Each party shall bear their respective costs, including attorneys' fees, except that respondent is liable and shall pay to claimant the sum of \$375.00 to reimburse claimant for a portion of the hearing session deposit previously paid to the NASD.
3. All other claims are hereby denied.

**FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee and the \$750.00 hearing session deposit previously submitted by claimant as full consideration for the hearing held in this matter.

**ARBITRATORS' SIGNATURES**



Richard S. Peskin, Esq.  
Chairperson-Industry Arbitrator

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John W. Belash, Esq.  
Industry Arbitrator

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Alan Jaffee  
Industry Arbitrator

Date of Decision: June 10, 1996

I, **Richard S. Peskin, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that this is my decision in the above-referenced matter.



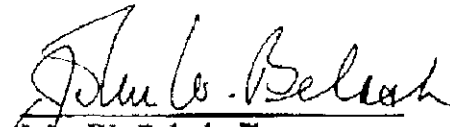
Richard S. Peskin, Esq.

**FORUM FEES**

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**ARBITRATORS' SIGNATURES**

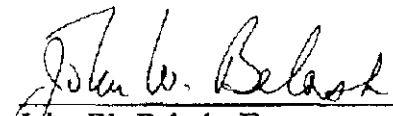
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Richard S. Peskin, Esq.  
Chairperson-Industry Arbitrator

  
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John W. Belash, Esq.  
Industry Arbitrator

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Alan Jaffee  
Industry Arbitrator

Date of Decision: June 10, 1996

I, John W. Belash, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that this is my decision in the above-referenced matter.

  
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John W. Belash, Esq.

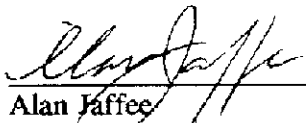
**FORUM FEES**

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**ARBITRATORS' SIGNATURES**


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Richard S. Peskin, Esq.  
Chairperson-Industry Arbitrator

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John W. Belash, Esq.  
Industry Arbitrator

  
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Alan Jaffee  
Industry Arbitrator

Date of Decision: June 10, 1996

I, **Alan Jaffee**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that this is my decision in the above-referenced matter.

  
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Alan Jaffee