

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimant

Gary H. Reaves

95-03915

Name of Respondents

Wheat First Securities, Inc.  
Colin C. "Cam" Murchison

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**REPRESENTATION**

Claimant Gary H. Reaves ("Claimant") was represented by William H. Lindsey, Esquire, of the law firm of William H. Lindsey, P.C., Salem, Virginia.

Respondent Colin C. Murchison ("Murchison") and Respondent Wheat First Securities, Inc. ("Wheat First") were represented by Jonathan M. Harris, General Counsel and Managing Director of Wheat First Securities, Inc., Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed: August 8, 1995.

Amended Statement of Claim filed: October 2, 1995

Claimant's first Submission Agreement signed on: July 13, 1995.

Claimant's second Submission Agreement signed on: October 24, 1995.

Respondents Wheat First and Murchison (collectively referred to as "Respondents") Joint Statement of Answer filed on: February 23, 1996.

Wheat First's Submission Agreement was executed by Jonathan M. Harris, Managing Director on: February 22, 1996.

Murchison's Submission Agreement signed on: February 21, 1996.

### HEARING INFORMATION

Pre-Hearing Conference: October 4, 1996, one session - with NASD Regulation, Inc. ("NASD Regulation") staff.

Hearing Date/Sessions: October 8, 1996, two sessions.

Hearing Location: Omni Richmond Hotel, Richmond, Virginia.

### CASE SUMMARY

Claimant alleged, among other things, that in January 1993, he transferred three brokerage accounts from the brokerage house of Raymond James to Respondent Wheat First. The three accounts consisted of a personal account, an IRA account and a SEP IRA. Claimant alleged that in switching these accounts to Wheat First, he was seeking the advice of a full service brokerage and an experienced broker.

Claimant alleged that he was referred by Wheat First to Murchison. Claimant alleged that Murchison told him (Claimant) that he had been a bank trust officer and that he had seven years experience in the brokerage business. Claimant asserted that Murchison had been associated with Wheat First for less than one year and had, during that time, participated in the training program offered by Wheat First. Claimant alleged that the investments he made in the three accounts were conservative and were in large part made with the advice and counsel of Murchison.

Claimant alleged that in September of 1994, Murchison advised him of the opportunity to purchase shares of the Sterile Concepts IPO ("Sterile Concepts") and indicated to Claimant that Sterile Concepts was a "hot new item" that could easily go up five points quickly. Claimant alleged that based upon Murchison's sales pitch, he requested 3,000 shares of this IPO. Claimant alleged that at that time Murchison put a prospectus in the mail and that several days later Claimant called to discuss some questions that he had regarding Sterile Concepts. Claimant alleged that he had never purchased an IPO before purchasing Sterile Concepts. Claimant alleged that he understood at that time that Murchison was recommending that Claimant purchase an additional 2,000 shares to make sure that Claimant would get the 3,000 originally requested. Claimant alleged that he understood from Murchison that demand for these IPO shares was anticipated to exceed the supply and that it would be necessary to request a greater number of shares to be sure to get the 3,000 shares actually wanted. Claimant alleged that he subsequently requested an additional 5,000 shares to be sure he got some portion of the IPO.

Claimant alleged that after these orders, Murchison continued to talk up Sterile Concepts and advised Claimant that the security had a strong upside potential, that Murchison was buying Sterile Concepts for his own account and that he was actually making very little commission on

this sale. Claimant alleged that Murchison did not advise Claimant that Wheat First actually owned the IPO shares which Murchison was selling. Claimant alleged that he did not discover Wheat First relation to Sterile Concepts until Murchison actually sold only a total of 12,440 shares of this security, 500 of which Murchison bought for his own account and 10,000 of which were sold to Claimant.

Claimant alleged that he was concerned because he did not have enough cash to pay for the purchase of 10,000 shares of Sterile Concepts. Claimant alleged that he had never made a six-figure purchase of a stock in his life. Claimant alleged that Murchison urged him to margin Claimant's other account assets to be able to finance the purchase of 10,000 shares at \$17.00 per share. Claimant alleged that at all times before the opening date of this IPO, Claimant understood from Murchison that no investor was likely to get his/her entire order for this IPO. Claimant alleged that he was shocked to learn on the day the IPO opened that he had in fact purchased the entire 10,000 shares discussed between him and Murchison. Claimant alleged that he expressed this shock to Murchison and was advised by Murchison that if he did not take the entire 10,000 shares of Sterile Concepts that Wheat First would not likely allow him to participate in any IPO offerings in the future.

Claimant alleged that on the opening of the IPO, he placed approximately \$112,000.00 in his margin account to pay for this issue. Claimant alleged that Murchison continued telling Claimant that Sterile Concepts had great potential and that he should be able to hold the security for a short term and get out with a profit of \$10,000.00 - \$30,000.00.

Claimant alleged that shortly after opening, the stock price increased to \$17.25 from its opening price of \$17.00. Claimant alleged that with the sales commissions, he would have broken even at that point and suggested a sale at that price to Murchison. Claimant alleged that Murchison advised him to hold the security because of its potential. Claimant alleged that Murchison also advised for the first time that the stock would be thinly traded and that it would probably need to be sold in smaller blocks to avoid skewing the price down. Claimant alleged that Murchison advised that both Wheat First and Salomon Brothers were going to put buy recommendations on Sterile Concepts and that it ought to go up at that time.

Claimant alleged that he asked to be able to speak to someone at Wheat First with more authority and he was referred to Tyler Pugh who advised Claimant that the stock should increase to 20 after it broke back through the 17 barrier. Meanwhile, the stock was falling in price and Claimant was accruing interest on his margin account.

Claimant subsequently moved his accounts to Scott & Stringfellow and sold his Sterile Concepts shares in increments taking a total capital loss of \$23,000.00.

Respondents denied each and every allegation of wrongdoing alleged by Claimant. Respondents maintained, among other things, that no one guaranteed to Claimant that his investment in Sterile Concepts would go up; Claimant was never told that he could not sell his shares or that the market would not accommodate a block order of 10,000 shares. Respondents maintained that Claimant was counseled that he may be able to obtain a better price if the shares sold in smaller increments or sold through Wheat First's block trading desk. Respondents maintained that Claimant elected to do neither. Respondents maintained that at all times Claimant was provided with true and accurate information concerning the Offering and aftermarket prospects for these shares. Respondents maintained that Claimant was clearly advised of the risks associated with the transactions, and made fully informed decisions to buy Sterile Concepts as well as retain them. Respondents maintained that of the 10,000 shares purchased, only 3,000 of those shares were bought at Murchison's suggestion. Respondents maintained that Claimant made the independent decision to acquire the additional 7,000 shares, notwithstanding Murchison's recommendation that he not do so. Respondents maintained that Claimant could have sold all or part of his position at a profit shortly after the Offering was completed, but Claimant elected to hold out for a better price. Respondents maintained that to the extent Claimant failed to profit from this transaction, he, not Murchison, is at fault. Respondents maintained that Claimant received regular and timely information regarding the value of his holdings through his receipt of monthly account statements, yet refused to act to mitigate actual or prospective losses.

Respondents maintained the following affirmative defenses: 1) if fault must be established it rest on Claimant, not with Respondent, therefore, Claimant fails to state a cause of action which is actionable at law; 2) Claimant is barred from recovery because he directed, authorized, consented to and ratified all of the subject transactions; 3) Respondents are not liable to Claimant in any amount because at all times they acted properly and in good faith in regard to the servicing of Claimant's account; 4) that to the extent that Claimant suffered losses, these losses were due to market events outside the control of Respondents; and 5) if Respondents were negligent in any way, which negligence is expressly denied, Claimant is barred from any recovery because of his contributory negligence.

#### RELIEF REQUESTED

Claimant requested restitution of the \$23,000.00 which he lost in this issue, restitution of \$5,100.00 which he lost in interest on his margin account to assist the purchase of this issue, loss of use of the money tied up for this investment of approximately \$8,925.00, a reasonable award for punitive or exemplary damages and attorney's fees and costs totalling approximately \$12,000.00.

Respondents requested that Claimant's claim be dismissed in its entirety, to award Respondents such costs, fees and expenses as they have incurred in defense of this claim and to order the

NASD to expunge from its records Claimant's claim against Murchison.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD Regulation.

### 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. Claimant's claim is denied in its entirety.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That Respondents request to have Murchison's record expunged of this claim is denied.
4. That the parties shall bear their respective costs, including attorney's fees, except as forum fees are specifically addressed below.

### FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following forum fees are assessed.

2 sessions x \$500 = \$1,000

Forum fees assessed against: 50% Claimant and 50% Respondents.

Claimant is assessed forum fees in the amount of \$500, however, Claimant is entitled to offset this amount with his hearing session deposit of \$500 previously filed so that no additional fees are due from Claimant. Respondents Wheat First and Murchison are jointly and severally assessed forum fees in the amount of \$500.

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Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

11/21/96

Stuart H. Dunn  
Stuart H. Dunn, Chairperson  
Public Arbitrator

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Arnald B. Crews, Panelist  
Public Arbitrator

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Francis M. Hall, Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation, Inc.: November 26, 1996

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Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

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Stuart H. Dunn, Chairperson  
Public Arbitrator

11/19/96

Arnold B. Crews  
Arnald B. Crews, Panelist  
Public Arbitrator

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Francis M. Hall, Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation, Inc.: November 26, 1996

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DATE

Concurring Arbitrators' Signatures

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Stuart H. Dunn, Chairperson  
Public Arbitrator

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Arnald B. Crews, Panelist  
Public Arbitrator

Nov 19, 1996

Francis M. Hall  
Francis M. Hall, Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation, Inc.: November 26, 1996