

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

GVR Company

95-03918

Name of Respondent

AAA Stockbrokers, Inc.

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**REPRESENTATION**

For Claimant: GVR Company ("GVR") was represented by James E. Dahl, Esq. of James E. Dahl & Associates, located in Chicago, Illinois.

For Respondent: AAA Stockbrokers, Inc. ("AAA") did not appear at hearing, but was represented by Jonathan A. Pace, Esq. of Pace & Rickey, L.L.P., located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed: August 15, 1995.

Claimant's Submission Agreement signed on: August 10, 1995 by Eugene V. Rintels, President, GVR Company.

Statement of Answer filed by Respondent on: October 17, 1995.

Respondent's Submission Agreement signed on: October 13, 1995 by Peter Wu, President, AAA Stockbrokers, Inc.

**HEARING INFORMATION**

Pre-Hearing Conference:                      None Held.

Hearing Date/Sessions: June 17, 1996 for One (1) session.

Hearing Location: Chicago, Illinois

### **CASE SUMMARY**

Claimant GVR alleged that Respondent AAA failed to purchase shares of Netscape Communications Corp. ("NSCP") pursuant to their agreement to purchase the shares. Specifically, GVR alleged that:

1. AAA placed orders with GVR and contracted for the purchase of 21,290 shares of NSCP at the opening market price when the initial public offering of NSCP was made available to the market on August 9, 1995;
2. Pursuant to the agreement, GVR purchased 21,290 shares of NSCP stock at the opening price of \$71.00 per share. However, the price decreased markedly throughout the day;
3. AAA purchased 16,140 shares of NSCP from GVR, but refused to purchase the remaining 5,150 shares because AAA's customer supposedly refused to honor the customer's agreement with AAA to purchase the stock;
4. GVR sold the 5,150 shares in order to reduce its exposure and mitigate damages, recovering the sum of \$272,737.50 and sustaining a loss of \$92,912.50 as a result of AAA's breach of the agreement to purchase.

AAA denied that it contracted to guarantee the payment or purchase of the shares of NSCP, and that GVR must pursue the customers who refused to purchase the shares ordered on their behalf.

### **RELIEF REQUESTED**

Claimant GVR requested entry of an award of \$92,912.50 as compensatory damages; pre-award interest at the rate of 8% per annum from August 9, 1995 until the date the award is entered; attorneys' fees, litigation costs and filing fees; and for such additional relief as the arbitrators deemed appropriate.

Respondent AAA requested that the claim be denied.

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

By letter dated May 14, 1995, counsel for AAA advised claimant and the NASD that AAA Stockbrokers, Inc. had ceased business and would not appear at the arbitration proceeding. No one appeared for Respondent at the hearing. Pursuant to Section 29 of the NASD Code of Arbitration Procedure, the panel determined that the arbitration of the controversy would proceed.

### **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. Respondent AAA Stockbrokers, Inc. is liable for and shall pay to Claimant GVR Stockbrokers, Inc. the sum of \$91,581.54 in actual damages;
2. In addition, Respondent AAA Stockbrokers, Inc. is liable for and shall pay to Claimant GVR Company the sum of \$1,100.00 as reimbursement of the claim filing fee and hearing sessions deposit paid by the Claimant;
3. All remaining costs of arbitration, including any attorneys' fees, shall be borne by the party incurring the cost; and
4. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

The National Association of Securities Dealers, Inc. shall retain the \$300.00 surcharge paid by GVR Company pursuant to Section 45 of the NASD Code of Arbitration Procedure. In addition, Respondent AAA Stockbrokers, Inc. is liable for and shall pay to the NASD the sum of \$300.00 as the surcharge required by Section 45 of the NASD Code of Arbitration Procedure.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$600.00 per session = \$600.00.

The NASD shall retain the \$500.00 non-refundable claim filing fee and the \$600.00 hearing

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session deposit previously paid by the Claimant, GVR Company. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Kevin J. Conway

July 20, 1996

Kevin J. Conway, Esq.

Industry Arbitrator

Chairperson

/s/ Brian E. Slotky

July 24, 1996

Brian E. Slotky

Industry Arbitrator

/s/ James A. Hume

July 26, 1996

James A. Hume

Industry Arbitrator

For NASD Use Only

Date of Service of Award: July 30, 1996