

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Stephen H. Rosenoff

95-04510

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Securities Dealers, Inc.

Name of Resoondent

\*Wheat First Securities, Inc.

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REPRESENTATION

Claimant Stephen H. Rosenoff ("Claimant") was represented by David A. Furrow, Esq., Rocky Mount, Virginia.

Respondent Wheat First Securities, Inc. ("Respondent") was represented by Jonathan M. Harris, Esq., Wheat First Butcher Singer, Richmond, Virginia.

CASE INFORMATION

Claimant's Statement of Claim was filed September 22, 1995.

Claimant's Uniform Submission Agreement was signed October 11, 1995.

Respondent's Statement of Answer was filed December 20, 1995.

Respondent's Uniform Submission Agreement was signed December 20, 1995.

HEARING INFORMATION

Hearing Date/Sessions: July 18, 1996/two sessions

Hearing Location: Omni Richmond Hotel  
Richmond, VA

CASE SUMMARY

Claimant alleged that Claimant suffered losses in his account because Respondent failed to institute stop loss procedures as specifically instructed by Claimant, failed to provide necessary information and provided incorrect information. Claimant maintained that Respondent had been provided very specific procedures in which a trailing stop loss was maintained seven percent behind the current price of a stock. Claimant alleged that Claimant expected Respondent to institute this stop loss procedure on any future stock held by Claimant. Claimant alleged that on April 5, 1995 Claimant held approximately thirty five thousand shares of Circuit City common stock which was trading at \$27.00 per share. Respondent informed Claimant that Circuit City's year end report was due out April 6, 1995 and that the status of Circuit City stock would be analyzed by Respondent's market analyst. In addition, Claimant alleged that Respondent specifically told Claimant that the year end report would not include same store sales figures.

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Claimant alleged that, in fact, Respondent's market analyst was never contacted for an analysis of Circuit City and that Respondent knew that the same store sales figures would be announced the evening of April 5, 1995. Claimant alleged that Respondent called Claimant at 9:50 a.m. on April 6, 1995 and informed Claimant that Circuit City opened at \$26 3/8 and then dropped to \$25 3/8 during the telephone conversation. Claimant alleged that had Claimant known that the same store sales figures were to be released on April 5, Claimant would have sold his shares immediately. Claimant alleged that during the day of April 6, 1995, Claimant repeatedly received incorrect information as to the Circuit City stock and the assets in Claimant's account. Claimant alleged that had Respondent provided Claimant with accurate and complete information, and instituted the stop loss procedures as requested, Claimant would not have suffered the loss. Claimant alleged that Respondent is responsible for the damages suffered by Claimant.

Respondent denied all allegations of wrong-doing. Respondent maintained that Claimant failed to articulate or communicate any stop loss procedure to Respondent. Respondent agreed that Claimant sold his Circuit City stock at less than \$27 per share and that Circuit City's quarterly results failed to meet analyst projections, thereby leading to a decline in the market price of shares. Respondent maintained that Claimant was an experienced investor who often held large positions in growth securities. Respondent maintained that it was anticipated that quarterly results would be announced on or about April 6 and would be followed a day or two later by same store comparisons. Respondent maintained that no one knew that Circuit City would fail to meet earlier projections by market analysts causing the prevailing market prices to fall. Respondent maintained that Claimant was in daily contact with Respondent and Respondent discussed with Claimant various exit theories for Circuit City in the event of a decline. Respondent maintained that Claimant was reluctant to sell prior to the release of Circuit City's corporate disclosure. Respondent maintained that Claimant did not give instructions to sell until after Circuit City's share price had dropped below \$26.00 per share. Respondent maintained that Claimant was well aware of Claimant's investment alternatives and had received all publicly available information concerning Circuit City. Respondent maintained that Claimant refused to issue any specific instructions concerning the stock until Claimant placed a limit order on April 6, 1995. Respondent maintained that any losses suffered by Claimant were the result of Claimant's own decisions and market fluctuations.

#### **RELIEF REQUESTED**

Claimant requested relief in the amount of \$90,528.57 and pre-award interest from April 11, 1995.

Respondent requested that the Statement of Claim be dismissed in all respects and that the costs and fees of this arbitration be assessed to Claimant.

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

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.

After full consideration of Claimant's Motions to Preclude the Answer, Preclude Interrogatories and to Quash the Appearance of Respondent's Witnesses as well as Respondent's Responses thereto, the panel denied the Motions.

7/25/96

**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. That the Statement of Claim is denied in its entirety.
2. That each party will pay its own costs and expenses.
3. That any and all relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Section 10332(c) (previously Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$500.00 = \$1,000.00

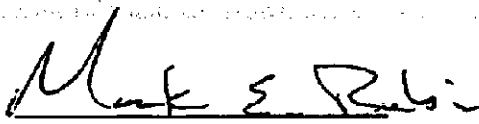
Forum Fees are assessed against Claimant and Respondent in equal amounts. Claimant is to receive credit for the \$500.00 hearing session deposit previously submitted to the NASDR. Respondent has a net assessment due of \$500.00.

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

**DATE**

7/25/96

**CONCURRING ARBITRATORS' SIGNATURES**

  
Mark E. Rubin, Presiding  
Public Arbitrator

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Emerson R. Marks, Jr.  
Public Arbitrator

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Francis M. Hall  
Industry Arbitrator

Date Decision Served by NASD

July 30, 1996

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**AWARD**

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1. That the Statement of Claim is denied in its entirety.
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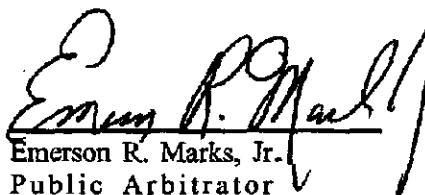
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Mark E. Rubin, Presiding  
Public Arbitrator

7/28/96

  
Emerson R. Marks, Jr.  
Public Arbitrator

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Francis M. Hall  
Industry Arbitrator

Date Decision Served by NASD:

July 30, 1996

9/607200

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