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NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC

In the Matter of the Arbitration Between

Dennis Guptil

Claimant,

v.

No. 95-04862

**Chatfield Dean & Co., Inc.,
Andrew S. Pesner, and
John M. Dabal**

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Respondents.

REPRESENTATION OF PARTIES

Claimant Dennis Guptil was represented by Robert A. Hill, Esquire, located in Minneapolis, MN.

Respondent Chatfield Dean & Co., Inc. was represented by Christa D. Taylor, Esquire, of Chatfield Dean & Co., Inc. located in Greenwood Village, CO.

Respondent Andrew S. Pesner was represented by Elliot Gayer, Esquire, of Lew Lieberbaum & Company, Inc. located in Garden City, NY.

Respondent John M. Dabal was represented by Elliot Gayer, Esquire, of Lew Lieberbaum & Company, Inc. located in Garden City, NY.

CASE INFORMATION

Claimant Dennis Guptil's Statement of Claim was filed on or about October 13, 1995.

Claimant Dennis Guptil's Submission Agreement was signed on October 4, 1995.

Respondent Chatfield Dean & Co., Inc.'s Statement of Answer was filed on or about December 14, 1995.

Respondent Chatfield Dean & Co., Inc.'s Submission Agreement was signed on December 12, 1995 by S. Cheryl Bauman, Vice President of Compliance of Chatfield Dean & Co., Inc.

The NASD has no record of Respondent Andrew S. Pesner's Statement of Answer.

The NASD has no record of Respondent Andrew S. Pesner's Submission Agreement

The NASD has no record of Respondent John M. Dabal's Statement of Answer.

The NASD has no record of Respondent John M. Dabal's Submission Agreement.

HEARING INFORMATION

The hearing was held on June 25, 1996 in Minneapolis, MN for a total of one (1) session.

CASE SUMMARY

Claimant alleged that Respondents Chatfield Dean & Co., Inc., Andrew S. Pesner, and John M. Dabal ("Respondents") fraudulently induced him to purchase approximately 4,000 shares of IWI Holding Limited, which substantially fell in price causing damages. Claimant asserted that Respondents provided inaccurate information, failed to provide a prospectus in a timely manner, used pressure to sell the securities, and failed to execute Claimant's sell requests. Claimant made the following legal claims: (1) Respondents violated Section 12(2) of 15 U.S.C. § 771(1); (2) Respondents violated Section 10(b) of 15 U.S.C. § 78j(b) and Rule 10b-5 of 17 C.F.R. § 240.10b-5; (3) Respondents violated Colo. Rev. Stat. § 11-51-501; (4) Respondents violated Section 20(a) of 15 U.S.C. § 78t(a), Colo. Rev. Stat. § 11-51-604(5)(b), Section 27 of the NASD Rules of Fair Practice; (5) Respondents committed common law fraud; (6) Respondents made negligent misrepresentations; (7) Respondents breached their fiduciary duties; (8) Respondents committed negligence; and (9) Respondents should have to pay punitive damages.

Respondent Chatfield Dean & Co., Inc. ("Chatfield") denied the allegations set forth in its Statement of Claim. Chatfield specifically stated that Claimant was an experienced investor and that he had access to a preliminary prospectus and a final prospectus, both of which expressed that the investment in IWI Holding securities involved a high degree of risk. Chatfield made the following affirmative defenses: (1) Claimant failed to state a claim upon which relief may be granted; (2) Claimant has failed to mitigate damages; (3) waiver, estoppel and laches bar the claim; (4) the decline in the value of the purchased security was due to market conditions and not to any alleged wrong doing on the part of Chatfield; (5) Claimant, was contributorily negligent; and (6) Claimant is not entitled to attorney's fees because his Customer Agreement precludes such a claim.

RELIEF REQUESTED

Claimant requested: an award in excess of \$20,000, for actual damages; interest at the statutory rate, dating from December 23, 1994, on all sums awarded by the arbitrators; attorney's fees; and punitive damages against Andrew S. Pesner and Chatfield Dean & Co., Inc.

Respondent Chatfield Dean & Co., Inc. requested that the claims asserted against it be denied in its entirety and it be awarded its costs and attorneys' fees.

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OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Chatfield Dean & Co., Inc., Andrew S. Pesner, and John M. Dabal ("Respondents") have been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents have received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.,

Respondents Andrew S. Pesner and John M. Dabal did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That respondents Andrew S. Pesner and John M. Dabal are jointly and severally liable and shall pay to claimant Dennis Guptil \$17,455.55 in actual damages;
- (2) That respondents Andrew S. Pesner and John M. Dabal are jointly and severally liable and shall pay to claimant Dennis Guptil \$4,650.00 in attorney's fees;
- (3) That other than forum fees which are addressed below, all other relief not specifically awarded are hereby denied.

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FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$400 = \$400 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a prehearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$100 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Respondent Chatfield Dean & Co., Inc.

The Respondent Chatfield Dean and Co. is liable for and shall reimburse the Claimant \$200, one half of his hearing session deposit.

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

Dated:

/s/ James Lundberg

8/7/1996

James A. Lundberg, Esquire
Public Arbitrator, Presiding Chair

/s/ Christine C. DeMoss

8/5/96

Christine C. DeMoss, Esquire
Public Arbitrator

Harold H. Goodman
Industry Arbitrator

Date of the service by the NASD: September 3, 1996