

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Ronald I. Palluth and Erika M. Palluth,

Claimants,

and

No. 96-00013

W.B. McKee Securities, Inc. and Deedra K. Brown,

Respondents,

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### **REPRESENTATION OF PARTIES**

Claimants Ronald I. Palluth and Erika M. Palluth were represented by Rick L. Lambert, Esquire and Jerry Alexander, Esquire, both of Passman & Jones, located in Dallas, Texas.

Respondent W.B. McKee Securities, Inc. was represented by David G. Bray, and Don Martin, Esquire, both of Streich Lang, located in Phoenix, Arizona.

Respondent Deedra K. Brown was not presented at the hearing and was not represented in pleadings or at the hearing in this matter.

### **CASE INFORMATION**

Claimants Ronald I. Palluth and Erika M. Palluth's Statement of Claim was filed on or about January 2, 1996. Claimant Ronald I. Palluth and Erika M. Palluth's Submission Agreement was signed on December 19, 1995.

Respondent W.B. McKee Securities, Inc.'s Statement of Answer was filed on or about March 12, 1996. Respondent W.B. McKee Securities, Inc.'s Submission Agreement was signed on March 14, 1996 by John M Gersten, Compliance Officer of W.B. McKee Securities, Inc.

### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on:      February 18, 1997 for two (2) sessions;  
   February 19, 1997 for three (3) sessions;  
   February 20, 1997 for two (2) sessions; and

February 28, 1997 for three (3) sessions.

The hearing was held in Dallas, Texas.

### **CASE SUMMARY**

Claimants Ronald I. Palluth and Erika M. Palluth ("Claimants") alleged that respondent Deedra K. Brown ("Ms. Brown"), the broker who serviced their account with respondent W.B. McKee Securities, Inc. ("McKee"), made misrepresentations and omissions of material facts, breached her fiduciary duties to Claimants, and conducted unauthorized trading in their account and made unsuitable investments. Claimants asserted that Ms. Brown and/or McKee (hereinafter collectively referred to as "Respondents") made misrepresentations regarding the viability of Interactive Network, Inc. ("Interactive"), which was traded in Claimants account from March 26, 1993 to August 26, 1994. According to Claimants, they suffered losses in their account in excess of \$268,000.00 because Ms. Brown: (1) failed to follow Claimants' investment objectives or instructions; (2) did not disclose the effects of margin trading; (3) did not seek Claimants' approval or notify them of trades of Interactive or the risks involved; (4) misled Claimants about the financial condition of Interactive; (5) borrowed money from Claimants in order to protect her investment in Interactive; (6) never disclosed or explained her relationship with Interactive; (7) failed to properly discharge her fiduciary duty to Claimants; and (8) timed trades in statement date intervals so that Claimants would not be aware of huge blocks of trades in Interactive. Claimants further alleged that McKee was negligent in the supervision of Ms. Brown.

McKee stated that Claimants were knowledgeable of their trades and of trading on margin, and Claimants reported that they had a good rapport with Ms. Brown. McKee further stated that Ms. Brown had no reason to exaggerate the viability of Interactive due to projections and audited financial statements issued to her from Interactive. According to McKee, Ms. Brown had no relationship with Interactive, and it denied any knowledge of evidence indicating that Ms. Brown borrowed money from Claimants. Finally, McKee stated that Ms. Brown was in constant communication with Claimants, Claimants received all confirmations and statements from Southwest Securities, McKee's clearing firm, and it knew of no customer complaints logged into the firm by Claimants.

### **RELIEF REQUESTED**

Claimants Ronald I. Palluth and Erika M. Palluth requested an award for actual damages and attorneys' fees in an amount in excess of \$268,000.00.

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

Upon review of the file and the representations made by/on behalf of claimant, the undersigned arbitrators have determined that respondent Deedra K. Brown has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the

"Code"). The undersigned arbitrators have also determined that respondent Deedra K. Brown had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Deedra K. Brown did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

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 NASD Regulation, Inc. Office of Dispute Resolution.

### **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. Respondents W.B. McKee Securities, Inc. and Deedra K. Brown are jointly and severally liable for and shall pay claimants Ronald I. Palluth and Erika M. Palluth compensatory damages in the amount of \$85,000.00.
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were ten (10) hearing sessions x \$750 = \$7,500 in forum fees. Pursuant to §10332(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 pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimants Ronald I. Palluth and Erika M. Palluth.

NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimants Ronald I. Palluth and Erika M. Palluth.

Pursuant to §10333 of the Code, respondent W.B. McKee Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$350.

NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by respondent W.B. McKee Securities, Inc.

Respondents W.B. McKee Securities, Inc. and Deedra K. Brown are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$6,750 (= \$7,500 total forum fees - \$750 hearing session deposit by claimants Ronald I. Palluth and Erika M. Palluth).

Respondents W.B. McKee Securities, Inc. and Deedra K. Brown are jointly and severally liable for and shall reimburse claimants Ronald I. Palluth and Erika M. Palluth for their hearing session deposit in the amount of \$750.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Hawk Vanberg Storm  
Hawk Vanberg Storm, Esquire  
Public Arbitrator, Presiding Chair

March 25, 1997

/s/ Winston C. Fournier  
Winston C. Fournier  
Public Arbitrator

March 25, 1997

/s/ Chester E. Young  
Chester E. Young  
Industry Arbitrator

March 25, 1997