

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donald M. Legg

96-00328

Name of Respondents

Wheat, First Securities, Inc. f/k/a Wheat First Butcher Singer
Joseph W. McCarthy

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 22, 1996, Claimant Donald M. Legg ("Claimant"), who appeared Pro Se, alleged that Respondent Wheat, First Securities Inc. ("WFS") and its employee, Joseph W. McCarthy ("McCarthy"), purchased unsuitable investments for his account and failed to properly advise him regarding alternatives. Claimant further alleged that McCarthy recommended that he purchase one to two thousand warrants of Capital Gaming International ("Capital"), and that on March 31, 1995, he instructed McCarthy to purchase five thousand warrants, which he did. Claimant further alleged that one month later, the value of Capital had declined to \$7,655.00, and that he called McCarthy several times over the next few months to discuss the stock, but McCarthy advised him to hold on because his research indicated the situation would improve. Claimant contended that in June, the value of Capital dropped to \$625.00, and that he sent a complaint and settlement request to McCarthy's supervisor, who declined any settlement and advised Claimant that McCarthy had discussed with him all information, the prospectus, alternatives and investment choices regarding his investment. Claimant further contended that McCarthy did not discuss alternatives or investment choices with him, and that he had a responsibility to him to make a personal inquiry to obtain sufficient information to ensure an informed decision, which he failed to do, and that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents Joseph W. McCarthy and Wheat, First Securities, Inc., through their representative and in-house counsel, Jonathan M. Harris, Esq., maintained that the Claimant is an experienced investor, who specifically indicated to McCarthy that he intended to employ a portion of his funds toward risk oriented investments. Respondents further maintained that prior to any recommendation, McCarthy had Claimant provide a detailed report reflecting his assets and liabilities and that a plan was devised with such information. Respondents contended that based on Claimant's objectives and professed level of risk tolerance, he was advised to invest in aggressive growth stocks. Respondents further contended that McCarthy advised Claimant to purchase one to two thousand warrants in Capital, but Claimant chose to buy 5,000 Warrants instead. Respondents maintained that the value of Capital did decline and that McCarthy sought information from the issuer, research analysts and the financial press concerning the

long term prospects for Capital. Respondents further maintained that, based on his findings, McCarthy advised Claimant to continue to hold on to the warrants. Respondents further maintained that although the anticipated turnaround failed to occur, they committed no wrongdoing and therefore, they should not be held liable.

RELIEF REQUESTED

Claimant Donald M. Legg, requested \$6,000.00 in actual damages.

Respondents Joseph W. McCarthy and Wheat, First Securities, Inc. requested that the claims of the Claimant be dismissed in their entirety, and that it be awarded costs and expenses, and in addition, that Respondent Joseph W. McCarthy's CRD file be cleared of this arbitration proceeding.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Bruce Sanders, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Donald M. Legg, on January 17, 1996, and by the Respondent McCarthy, on March 7, 1996, and by Respondent Wheat First Butcher Singer, on March 7, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Donald M. Legg, against the Respondents Joseph W. McCarthy and Wheat First Butcher Singer are dismissed in their entirety.
2. All other relief requests are denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Donald M. Legg, shall be retained by the NASD, Inc.

AFFIRMATION

I, **BRUCE SANDERS, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



BRUCE SANDER, ESQ.

DATE OF DECISION: May 29, 1996