

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant**

James W. McDonald, DDS

v.

Arbitration No.  
96-00506

**Name of Respondents**

Titan/Value Equities Group, Inc., Frank Lloyd King, Philip Bruce Anderson, Robert H. Osur

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**REPRESENTATION**

For Claimant:

J. Leo Federman  
Investors Rights Association, Inc.  
Santa Barbara, California

For Respondents:

G. Thomas Fleming, III, Esq.  
Jones Bell Simpson Abbott & Fleming  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed:	March 4, 1996
Amended Statement of Claim filed:	August 8, 1996
Claimant's Submission Agreement signed:	June 5, 1996
Statement of Answer filed by Respondents:	July 16, 1996
Respondents' Submission Agreement signed:	June 12, 1996

### **HEARING INFORMATION**

**Pre-Hearing Conference Dates/Sessions:** November 25, 1996 (1 session)  
January 28, 1997 (1 session)  
May 12, 1997 (1 session)

**Hearing Dates/Sessions:** June 10, 1997 (2 sessions)  
June 11, 1997 (2 sessions)

**Hearing Location:** Los Angeles, California

### **CASE SUMMARY**

Claimant alleged that Respondents committed fraud and deceit, breach of fiduciary duty, negligence and breach of contract. Specifically, Claimant asserted that Respondents continued to engage in recommending investments and/or holding investments that were contrary to the stated investment objectives of Claimant.

Respondents denied Claimant's claims in their entirety and asserted that Claimant was aware of the risks (and therefore high yield) associated with the investments offered to him.

### **RELIEF REQUESTED**

Claimant sought rescission of his investments, if applicable, compensatory damages in the amount of \$59,300.00, pre-award and post-award interest, and punitive damages.

Respondents sought dismissal of Claimant's claims in their entirety and costs.

### **OTHER ISSUES CONSIDERED AND 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 original remains on file with the NASD.

Respondent Robert H. Osur filed for bankruptcy on December 29, 1993. Claimant subsequently removed Mr. Osur as a named respondent in the Amended Statement of Claim filed on August 8, 1996.

All claims against Respondents Frank King and Philip Anderson were dismissed with prejudice by Claimant on January 22, 1997.

### **PRE-HEARING CONFERENCE SUMMARY**

The November 25, 1996, telephonic pre-hearing conference was held regarding Respondents motion: (1) for an order disqualifying Claimant's non-attorney representative; (2) for orders compelling Claimant to fully respond, without objections, to Respondents first request for information and documents; and (3) for sanctions. The panel found, with respect to such motions, as follows:

1. Predicated upon the discussion of non-lawyer representation and recommendations made by the January 1996 Report of the Arbitration Policy Task Force to the Board of Governors on the NASD, with respect to "Standards For Representation of Parties in Securities Arbitration," this Arbitration Panel has no present jurisdiction to order such disqualification;
2. As set forth in the foregoing Report of the Arbitration Policy Task Force, "communications between non-lawyers and their clients are not protected by the attorney-client privilege."
3. The panel denied Respondents' motion for monetary sanctions, without prejudice to renewal at later stages of the proceeding.

At the January 28, 1997, telephonic pre-hearing conference, various discovery orders were made with respect to Claimant's Motion to Compel Respondents' Production of Documents and Information; Mr. Federman informed the panel that he had eliminated Mr. Osur as a named Respondent because he understood that such person's bankruptcy precluded him from being a respondent (the Panel has neither asked for nor made any decision with respect to such reasoning); upon inquiry by Mr. Federman, the panel restated its determination that the attorney-client privilege is not available to a non-attorney.

At the May 12, 1997, telephonic pre-hearing conference, the parties stipulated that all Respondents, other than Titan/Value, had been dismissed; discussion followed with respect to Respondents "Motion for Order Compelling Further Responses to Respondents Request for Information and Documents" and "Request for Sanctions." After discussion, the Motion for Sanctions was denied without prejudice to renewal of same at the hearing.

### **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. Claimant's claims are denied in their entirety.
2. Claimant and his representative, Mr. J. Leo Federman, are jointly and severally liable for, and shall reimburse Respondent Titan/Value Equities Group, Inc., the sum of \$4,596.00, incurred by it arising from Claimant's failure to comply with previous orders of this Panel.
3. Each party shall bear his/its own costs, including attorney's fees.

### **SPECIAL FINDINGS**

- A. The arbitrators are making their Award upon the evidence produced notwithstanding the failure to appear at the hearing of any Respondent or any counsel therefore, other than for Titan/Value Equities Group, Inc.
- B. Insufficient evidence was introduced to reflect that misrepresentations were made to Claimant by any Respondent, or that they or any of them had omitted to state material facts which should have been stated to Claimant.
- C. It was apparent from the evidence that Claimant is not unsophisticated in securities matters; and on the basis of his sophistication and prior investment experience, he should have understood the speculative nature of his investments.
- D. It was also apparent from the evidence that the securities sold to Claimant were not suitable for him.
- E. No evidence was introduced with respect to any showing that Respondent Titan/Value Equities Group, Inc. exercised any supervision over the individual Respondents, or any of them.
- F. Claimant testified that his representative, Mr. Federman, had not informed him, either orally or in writing, of the previous telephonic pre-hearing conferences, or the respective orders of this panel with respect to the matters considered therein.
- G. Claimant is responsible for the acts of his agent, Mr. Federman.
- H. Mr. Federman repeatedly violated the prior discovery orders made by the panel, causing Respondent Titan/Value to incur expenses, including attorney fees, in the aggregate sum of \$4,596.00.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed against Respondent:

One (1) Full-Panel Pre-Hearing Conference @ \$500.00/Session	= \$500.00
Two (2) Single Arbitrator Pre-Hearing Conferences @ \$300.00/Session	= \$600.00
<u>Four (4) Hearing Sessions @ \$500.00/Session</u>	<u>= \$2,000.00</u>
<b>Total Forum Fees Assessed</b>	<b>= \$3,100.00</b>
 <b>Respondent's Balance Due</b>	 <b>= \$3,100.00</b>

Claimant's Hearing Session Deposit of \$500.00 shall be refunded by NASD Regulation, Inc.

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS**

<u>Name</u>	<u>Public/Industry</u>
Marvin Greene, Esq.	Public Arbitrator
Wendy L. Kohn, Esq.	Public Arbitrator
Andrew J. Sorenson	Industry Arbitrator

**Consenting Arbitrators' Signatures**

Marvin Greene  
Marvin Greene, Esq.

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Wendy L. Kohn, Esq.

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Andrew J. Sorenson

Date of Service: Sept 12, 1997

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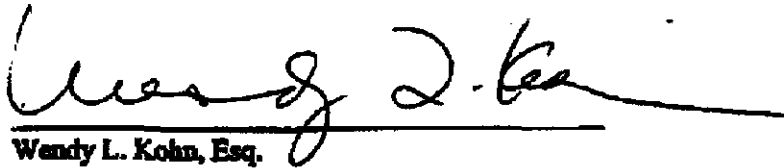
ARBITRATORS

NASD Arbitration Panel

<u>Name</u>	<u>Public/Industry</u>
Marvin Greene, Esq.	Public Arbitrator
Wendy L. Kohn, Esq.	Public Arbitrator
Andrew J. Sorenson	Industry Arbitrator

Concurring Arbitrators' Signatures

Marvin Greene, Esq.



Wendy L. Kohn, Esq.

Andrew J. Sorenson

Date of Service: Sept. 12, 1997

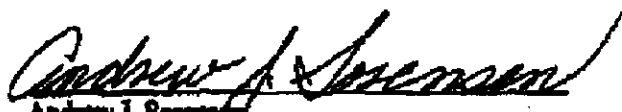
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Andrew J. Sorenson	Industry Arbitrator

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Wendy L. Kohn, Esq.

  
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Andrew J. Sorenson

Date of Service: Sept. 12, 1997