

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

John A. Wolfington

96-00885

Name of Respondents

Wheat First Securities, Inc.
Michael K. Casey

REPRESENTATION

Claimant John A. Wolfington ("Claimant") was represented by Matthew A. Taylor, Esq., Taylor and Taylor, Philadelphia, PA.

Respondents Wheat, First Securities, Inc. ("Wheat") and Michael K. Casey ("Casey") were represented by Stephen T. Gannon, Esq. and Mark J. Krudys, Esq., LeClair Ryan, Richmond, VA.

CASE INFORMATION

Claimant's Statement of Claim was filed February 27, 1996.

Claimant's Uniform Submission Agreement was signed February 9, 1996.

The Joint Statement of Answer of Wheat and Casey (collectively "Respondents") was filed May 6, 1996.

Wheat's Uniform Submission Agreement was signed May 6, 1996.

Casey's Uniform Submission Agreement was signed April 23, 1996.

HEARING INFORMATION

Prehearing Date/Sessions: January 3, 1997/one session

Hearing Date/Sessions: January 8, 1997/two sessions

Hearing Location: Vincent Varallo Associates, Inc.
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that at the suggestion of Casey he purchased 2,000 shares of Read-Rite Corp. stock for a principal amount of \$92,470.18. Claimant alleged that the average price of those shares was approximately \$45.90. Claimant alleged that he was to pay \$50,000.00 in cash and place the balance on margin. Claimant alleged that on September 14, 1995, Casey contacted Claimant and advised him to sell the Read-Rite stock and purchase Integrated Silicone Solution, Inc. ("ISSI") at market price which, at the time, was approximately \$45.00 per share. Claimant alleged that Respondents informed

Claimant that he could sell Read-Rite at \$45.00 and that Claimant took the advise with the specific understanding that Respondents would first sell Read-Rite at \$45.00 and then purchase ISSI.

Claimant alleged that Casey did not sell Read-Rite on September 14, 1995 because, according to Casey, after he hung up the telephone from speaking with Claimant, Casey contacted the trading desk and the quote for Read-Rite was below \$45.00 per share. Claimant alleged that regardless of not selling Read-Rite, Respondents purchased 2,000 shares of ISSI for Claimant's account for \$45.75 per share. Claimant alleged that on September 15, 1995, Casey informed Claimant of his actions and Claimant expressed his anger and demanded Casey clear up Claimant's account. However, Claimant alleged that the market price of ISSI fell dramatically after September 14, 1995 and has never recovered. Claimant alleged that on September 15, 1995, Casey promised that he would make Claimant whole by selling Read-Rite as close to \$45.00 per share as possible and cover whatever loss there was on ISSI, although Casey continued to assert a belief that ISSI would rebound. Claimant alleged that he instructed Casey to sell ISSI and make up the loss out of Casey's own funds. Claimant alleged that Casey refused to do that. Claimant further alleged that as ISSI stock fell in the weeks and months after September 15, 1995, Wheat systematically sold off Claimant's position in ISSI and now all that remains is \$76.00 in a money market fund. Claimant alleged that on September 18, 1995, Casey sold 2,000 shares of Read-Rite for \$44.50 a share and on the same date, Claimant paid into his account \$50,000.00 at the insistence of Casey. Claimant alleged that Respondents never fulfilled Casey's promise to make Claimant whole.

Respondents denied Claimants allegations of improper conduct in the failure to sell Read-Rite common stock at \$45.00 per share on September 14, 1995 and the failure to execute a stop loss order in the common stock of ISSI at \$42.00 per share. Respondents maintained that these allegations are simply not supported by the evidence and are counter intuitive to the dynamics of the broker-client relationship. Respondents maintained that Claimant and Casey initially discussed investment strategies in early May 1995. Respondents maintained that Claimant presented himself as an experienced and aggressive trader who liked to take large positions in individual stocks. Respondents maintained that after several discussions with Casey concerning his investment objectives and practices, Claimant opened an account with Wheat on or about June 30, 1995 with a purchase of the Seligman Communications & Information Fund. Respondents maintained that in late August, Casey recommended to Claimant the purchase of ISSI, then trading at approximately \$45.00 per share. Respondents maintained that Claimant declined to purchase at that time, although he expressed continued interest in the stock as it climbed to \$49.750 by the end of August. Respondents maintained that on September 11, Casey recommended to Claimant the purchase of Read Rite Corporation. Respondents maintained that Claimant purchased 2,000 shares, 1,200 at \$46.00 and 800 shares at \$45.75. Respondents maintained that the security maintained this price level for several days. Meanwhile, the price of ISSI had drifted back to at or about \$45.00. Casey maintained that he again recommended to Claimant that he purchase ISSI. Respondents maintained that at that time Casey and Claimant discussed the strategy of selling the Read Rite at \$45.00 per share and purchasing the ISSI.

Respondents maintained that Claimant gave Casey two orders: (1) a limit order to sell Read Rite at \$45, and (2) purchase ISSI at the market. These investments were not contingent on each other, that is, Casey was not instructed to purchase ISSI only if the Read Rite limit order was filled. Respondents maintained that Casey immediately contacted the Wheat trading desk to place the order. Respondents maintained that the market purchase of ISSI was filled, but Casey was informed by the trader that Read Rite was then trading at \$44.750. Respondents maintained that because Casey did not have a market order from Claimant, he could not place the order. Casey maintained that he immediately attempted to contact Claimant to inform him of the change in the market and obtain new instructions but was unable to reach him. Casey maintained that he left a message for Claimant to contact him. Casey also maintained that

he did not hear back from Claimant until the following day, and by that time the stock had further declined in value. Respondents maintained that Claimant made the decision to hold the stock to see if the price would recover. Respondents maintained that the stock traded at \$44.50 on September 18, and the position was sold. Casey maintained that he executed the sell order at a 50% commission discount.

Respondents maintained that over the next several weeks, ISSI shares declined in value and Casey and Claimant had frequent discussions concerning the investment. Notably, during this entire time period, Claimant never instructed Casey to sell the stock. Because of research in the market place regarding ISSI's prospects, Casey maintained that he continued to recommend to Claimant to hold the stock. Respondents maintained that because of the declining value of the ISSI position, Claimant was notified of a margin call in his account on October 11, 1995. Respondents maintained that it was then, for the first time, that Claimant remarked that he had instructed Casey to sell the stock at \$40.00. Indeed, over the next several days Respondents maintained that Claimant's story changed repeatedly, alleging that he had instructed its sale at various prices from \$38.00 to \$42.00. Respondents maintained that Claimant took no action whatsoever in response to the margin call. Casey maintained that he inquired if the Claimant desired the entire position be sold. Respondents maintained that Claimant declined and otherwise refused to meet his margin obligations. As a result, Wheat maintained that it was required to liquidate sufficient shares of ISSI to meet the account's margin requirements.

RELIEF REQUESTED

Claimant requested damages in the amount of \$49,000.00 plus interest from September 14, 1995 plus \$5,500.00 in attorney's fees.

Respondents requested that the panel: (1) dismiss Claimant's Statement of Claim, (2) order that all references to the arbitration be expunged from Casey's Form U-4, (3) award Respondents reasonable attorneys' fees as well as other costs associated with defending Claimant's meritless action and (4) such other and additional relief as this Panel may deem appropriate.

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.

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 Respondents are jointly and severally liable to and shall pay to Claimant the sum of \$7,500.00.
2. That each party shall bear its own costs and expenses including attorney's fees with the exception of forum fees as addressed below.
3. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

1 prehearing session x \$300.00 = \$ 300.00

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

Total Forum Fees \$1,300.00

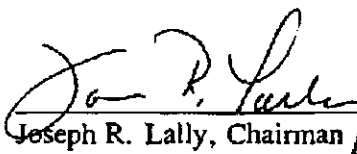
Forum Fees are assessed to Claimant at \$650.00 and to Respondents, jointly and severally, at \$650.00. Claimant is to receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimant a net assessment due of \$150.00. Respondents have an assessment due of \$650.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

1/23/97



Joseph R. Lally, Chairman
Public Arbitrator

Chess B. Faircloth
Public Arbitrator

Dominick L. Mattioni
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 28, 1997

FORUM FEES

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

1 prehearing session x \$300.00 =	\$ 300.00
2 sessions x \$500.00 =	\$1,000.00
Total Forum Fees	\$1,300.00

Forum Fees are assessed to Claimant at \$650.00 and to Respondents, jointly and severally, at \$650.00. Claimant is to receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimant a net assessment due of \$150.00. Respondents have an assessment due of \$650.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

1/22/97

Joseph R. Lally, Chairman
Public Arbitrator

Chess B. Faircloth
Chess B. Faircloth
Public Arbitrator

Dominick L. Mattioni
Industry Arbitrator

Date Decision Served by NASD Regulation: *January 28, 1997*

FORUM FEES

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

1 prehearing session x \$300.00 =	\$ 300.00
2 sessions x \$500.00 =	\$1,000.00
Total Forum Fees	\$1,300.00

Forum Fees are assessed to Claimant at \$650.00 and to Respondents, jointly and severally, at \$650.00. Claimant is to receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimant a net assessment due of \$150.00. Respondents have an assessment due of \$650.00.

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

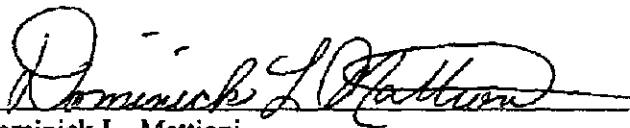
DATE

CONCURRING ARBITRATORS' SIGNATURES

Joseph R. Lally, Chairman
Public Arbitrator

Chess B. Faircloth
Public Arbitrator

1/22/97


Dominick L. Mattioni
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 28, 1997