

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Philip D. Fox

96-01298

Name of Respondent

D.E. Frey & Company, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 25, 1996, Claimant Philip D. Fox ("Claimant"), who appeared Pro Se, alleged that in November of 1993, Respondent D.E. Frey & Company, Inc. ("Respondent") recommended that he purchase a National Trade Trust Note (the "Note") which he followed to his detriment. Claimant further alleged that prior to making the purchase, he asked the broker if a due diligence investigation had been performed since the last audit dated December 12, 1992, and the prospectus dated June 1, 1993, and he was told yes. Claimant also alleged that he was also told the receivables financing was backed by insurance and the company was growing and doing well. Claimant contended that a Dave Wickersham had personally visited the company and performed the due diligence. Claimant further contended that in April of 1994, he received news that the company backing the note was in serious financial trouble. Claimant also contended that the situation deteriorated and in January 1995, he received a letter stating "there is little hop of receiving meaningful recover of my note." Claimant asserted that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent D.E. Frey & Company, Inc. through its representative, Barbara A. Adams, of the law firm of Brega & Winters, P.C., located in Denver, CO, denied the allegations that it failed to perform proper due diligence in this matter. Respondent further maintained that full disclosure was made to Claimant, a certified public account, on the Note and that Claimant knowingly accepted the risk vis-a-vis the provided disclosures and his financial sophistication and business acumen. Respondent also maintained that Claimant represented he had considerable net worth and qualifies as an accredited investor with a net worth exceeding \$1MM and an annual income over the last two years of at least \$200M. Respondent contended that there was no indication that the company was in financial trouble when Claimant made the purchase.

Respondent further contended that Claimant should be bound to accept the reorganization plan of National Trade Trust along with all other National Trade Trust investors. Respondent also contended that Claimant has concocted a damage formula under \$10,000.00 in order to avoid a hearing since a hearing would reveal his knowledge of the investment. Respondent asserted that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant requested \$9,914.00 in actual damages.

Respondent requested that the claims be dismissed and that it be awarded attorney's fees.

AWARD


Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David G. Beerbower, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 18, 1996, and Respondent on July 2, 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 Philip D. Fox against Respondent D.E. Frey & Company, Inc. are denied in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, David G. Beerbower, 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.


Signature of Arbitrator

DATE OF DECISION: October 15, 1996