

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Darrell Moore

96-02105

Name of Respondents

Nationwide Securities Corp.  
Thomas Deceglie  
Thomas DeSimone  
Shannon Johnson

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CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on May 15, 1996 claimant Darrell Moore ("claimant") who appeared Pro Se, alleged that respondents Nationwide Securities Corporation ("Nation"), Thomas Deceglie ("Deceglie"), Tom DeSimone ("DeSimone") and Shannan Johnson ("Johnson") ignored his written instruction to sell Thermo-Mizer Environmental ("Thermo"). Claimant further alleged that Thermo was an IPO that Nation was bringing out in February. Claimant also alleged that he was told by a friend that it was a good investment, so he placed an order with Deceglie for 500 units of Thermo and mailed a \$2,550.00 check to Southwest Securities on February 16, 1996. Claimant asserted that on February 28, 1996 DeSimone called and told him that he had been cut back to 300 units and would have to purchase 300 shares in the after market. Claimant further asserted that the stock opened at 7 1/2 and the warrants at 4 1/4. Claimant contended that he used the funds that were still in his account to purchase 300 more shares at \$7.00.

Claimant also asserted that from March 4 to March 12 the common stock and warrants dropped, so he called Deceglie and told him that he wanted to sell his stock and put the money back in his account. Claimant contended that Deceglie told him the stock would stabilize. As a result claimant allegedly held the stock. Claimant further contended that on March 14, 1996 he called Deceglie two times before lunch, but was told that he was not available. Claimant also contended he wrote a letter that afternoon instructing Deceglie to sell his common stock if it fell to 4 3/4 and to sell his warrants if they fell to 2 3/4. Claimant alleged that he called Deceglie to confirm that the fax was received, but Deceglie never spoke to him or returned his phone calls. Claimant further alleged that he confirmed receipt of the fax transmittal.

Claimant also alleged that for the next several days he tried to call Deceglie to check on the status, but he never called back. Claimant asserted that once the stock and warrants fell below the specified limits and the sell transaction was not completed, he called and spoke with respondent Johnson, whom was believed to be Nation's compliance officer. Claimant further asserted that on April 1, 1996 he called Johnson who stated that he was a consultant for Nation, not their compliance officer, and that he should follow up with Kevin Williams ("Williams").

Claimant also asserted that he never got in contact with Williams, but did speak with his assistant Mike Haeffling ("Haeffling") who told him that he had received several complaints against Deceglie, but that there was nothing Nation could do because it would cost the company too much money to rectify all of the accounts.

Respondent NationWide Securities Corporation ("Nation"), through their representative and counsel Jonathan A. Pace of the law firm Pace & Rickey, L.L.P. located in Dallas, Texas, maintained that claimant called to purchase shares in Thermo. Respondent Nation further maintained that there is no guarantee on IPO shares. Respondent also maintained that during the two week period claimant watched the stock drop, claimant never asked to speak with a compliance officer or supervisor, and that Nation never received a fax from claimant instructing it to sell his position. Respondent Nation further contended that Johnson, whom claimant alleged told him that he would take care of the situation, does not have the tools or ability to rectify customers' accounts. Respondent Nation also contended claimant had a duty to mitigate his damages and sell the securities through another broker.

Respondent Thomas Deceglie ("Deceglie"), who appeared Pro Se, maintained that he ceased conducting a retail securities business at Nation in January and later resigned for the subsequent position of sales assistant in March 1996, and did not conduct any of the complained of transactions in claimant's account. Respondent Deceglie further maintained that claimant stated that on February 28th a broker named Thomas DeSimone ("DeSimone") notified him that he had been cut back to 300 units and that he would have to purchase 300 units in the after market. Respondent Deceglie also maintained that the confirmation of the purchases appears to have been executed on behalf of DeSimone and not himself. Respondent Deceglie contended that none of the documents submitted by the claimant reflect his name or attribute, in any way, any of the transactions in claimant's account.

Respondent Deceglie further contended that he was not the individual who solicited the claimant, nor was he the individual who fraudulently misrepresented that he was him. Respondent Deceglie also contended that he resigned from his sales position on March 26, but claimant claims that a conference call was held on March 27 between himself, Johnson and a man identifying himself as Thomas Deceglie.

Respondent Thomas DeSimone ("DeSimone") who appeared Pro Se, maintained that he spoke with claimant on only one occasion when he gave him a quote and fax number to facilitate his selling instructions.

Respondent Shannon Johnson did not file an Answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant Darrell Moore requested \$3,675.00 in actual damages, plus \$2,500.00 for lost income, his time and the stress this has caused him and his family.

Respondent Nationwide Securities Corporation requested that the claims of the claimant be dismissed in its entirety.

Respondent Thomas Deceglie requested that the claims of the claimant against him be dismissed in its entirety.

Respondent Thomas DeSimone requested that the claims of the claimant against him be dismissed in its entirety.

Respondent Shannon Johnson did not file a Answer to the Statement of Claim.

**OTHER ISSUES CONSIDERED AND DECIDED**

In accordance with Section 10302 of the Code of Arbitration Procedure, respondent Shannon Johnson, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, service of the overdue answer notice and notification of the Arbitrator's identity was effected upon respondent Shannon Johnson, as evidence by the signed signature cards on file at NASD Regulation, Inc.

Pursuant to the By-laws of the NASD, the arbitrator determined that respondent Shannon Johnson had notice of the claim, and was required to submit to this arbitration proceeding. Respondent Johnson is, therefore bound by the arbitrator's ruling and determination.

**AWARD**

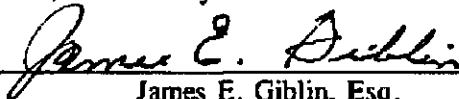
Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, James E. Giblin, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Darrell Moore on May 13, 1996 and by respondent Nationwide Securities Corporation on August 20, 1996, and by respondent Thomas Deceglie on September 25, 1996. No submissions were filed with NASD Regulation, Inc by respondents Thomas DeSimone and Shannon Johnson as required by Sections 10301 and 10302 of the Code of Arbitration Procedure.

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. Respondent Nationwide Securities Corporation he and hereby is liable and shall pay to the claimant Darrell Moore the sum of \$6,175.00 in actual damages.
2. The claims of claimant Darrell Moore against respondents Thomas Deceglie, Thomas DeSimone and Shannon Johnson are dismissed in their entirety.
3. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant Darrell Moore shall be retained by NASD Regulation, Inc.

**AFFIRMATION**

I, James E. Giblin, 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.

  
James E. Giblin, Esq.

Date of Decision: November 27, 1996