

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Kenneth A. Buecker

96-02152

Name of Respondents

David Lavender  
Kevin Williams

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 20, 1996 claimant Kenneth Bueckner ("claimant"), who appeared Pro Se, alleged that on February 19, 1996, he purchased 50 units of Thermo-Mizer Environmental Corp., ("Thermo-Mizer") through the New York office of Nationwide Securities Corp. ("Nationwide"). Claimant further alleged that during the week of February 26, 1996 and March 1, 1996 he instructed respondent David Lavender ("Lavender") to sell his position. Claimant also alleged that Lavender did not execute the sell order although he promised to. Claimant contended that his efforts to contact Lavender and to resolve the dispute with other employees at Nationwide were futile. Claimant further contended that his account was not handled properly and that Lavender and respondent Kevin Williams ("Williams"), Chief Compliance Officer at Nationwide were responsible for his loss.

Respondent Kevin Williams, by his representative Jonathan A. Pace, Esq., a sole practitioner of Dallas, Texas, maintained that he was the Chief Financial and Chief Compliance Officer of Nationwide. Williams further maintained that he was not the principal in the New York office where Lavender was employed, did not supervise Lavender directly and never spoke to claimant. Williams contended that there is no record of claimant's sell order and that he is not individually liable for Lavender's failure to execute an order. Williams further contended that claimant has not been damaged, but made money on the transaction.

Respondent David Lavender, who appeared Pro Se, maintained that he serviced claimant's account for approximately two months. Lavender further maintained that claimant purchased 500 units of Thermo-Mizer on February 28, 1996 and requested sale of his position on March 4, 1996. Lavender also maintained he investigated Nationwide's failure to execute claimant's sell order and was told by Williams that Nationwide would "not execute customer sell orders, unless a corresponding buy order accompanied it." Lavender contended that Williams carried out Nationwide's policy in violation of NASD's rules. Lavender further contended that he would suffer irreparable damage with respect to his U-4, for which Williams is responsible. Lavender maintained that he is not at fault for the failure to execute and that claimant also failed to mitigate his losses.

In his crossclaim David Lavender requested that this matter be dismissed against him in its entirety, and that if claimant is awarded any amount that it be against crossclaim Respondent Kevin Williams and/or Nationwide.

Crossclaim Respondent Kevin Williams did not file an Answer to the crossclaim of David Lavender.

### **RELIEF REQUESTED**

Claimant Kenneth Bueckner requested \$5,812.50 in actual damages.

Respondent Kevin Williams requested that he be dismissed and reimbursed for costs.

Respondent and Crossclaim Claimant David Lavender requested that the claim of claimant Kenneth Bueckner be dismissed in its entirety, and that if claimant is awarded any amount that Kevin Williams and/or Nationwide be liable.

Crossclaim Respondent Kenneth Williams did not file an Answer to the crossclaim of David Lavender.

### **AWARD**

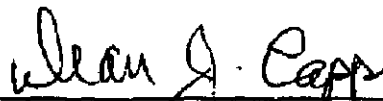
Pursuant to Section 10302 of the NASD Regulation, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Dean J. Capp, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 13, 1996, by Respondent Kevin Williams on August 20, 1996 and by Respondent David Lavender on September 12, 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 claim of Claimant Kenneth Bueckner against Respondent Kevin Williams is dismissed in its entirety.
2. Respondent David Lavender is liable and shall pay to Claimant Kenneth Bueckner \$2,560.00 in actual damages.
3. The claim of Crossclaim Claimant David Lavender against Crossclaim Respondent Kevin Williams is dismissed in its entirety.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Kenneth Bueckner shall be retained by the NASD, Inc. Respondent David Lavender is liable and shall pay to the Claimant Kenneth Bueckner \$150.00 as reimbursement of the filing fee.
6. Respondent David Lavender shall pay to the National Association of Securities Dealers Regulation, Inc. \$575.00 as payment for the Crossclaim filing fees. Payment shall be made to the National Association of Securities Dealers Regulation, Inc.

**AFFIRMATION**

I, **DEAN J. CAPP 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.



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Signature of Arbitrator

Date of Decision:     **December 30, 1996**