

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael A. Husa

96-02276

Name of Respondents

Capitol Bay Securities, Inc.
Stephen C. Kircher
Lisa McGarcar

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 28, 1996 Claimant Michael A. Husa ("Claimant"), who appeared Pro Se, alleged that Respondents Capitol Bay Securities ("Capitol"), Stephen C. Kircher ("Kircher"), and Lisa McGarcar ("McGarcar") (collectively referred to as "Respondents") took his investment money and purchased a security violating its suitability restrictions. Claimant further alleged that he purchased 900 units of Pearce System Int'l for \$6,525.00 from Capitol in February 1994. Claimant asserted that in March of 1996, he was informed by his broker at Capitol that the purchase of those units was done in error because the State of California had suitability restrictions on this offering, and he was not qualified to purchase them. Claimant further asserted that the president of Capitol told him that the firm was never informed that suitability was in place until they discovered it in March, 1996, and that he would be willing to speak to the lead underwriter to try and work something out for the Claimant. Claimant contended that Capitol should have never sold the securities to him because it was a direct violation of NASD by-laws as is evidenced by the imposition of a fine. Claimant further contended that due to the wrongdoing of the Respondents, he suffered damages for which the Respondents should be held liable.

Respondents Capitol Bay Securities, Inc. ("Capitol"), Stephen Kircher ("Kircher") and Lisa McCargar ("McCargar") (collectively referred to as "Respondents"), maintained that they have no input as to disclosures made in the Pearce Prospectus. Respondents further maintained that this disclosure responsibility lies with Paulson as the underwriter and Pearce as the issuer. Respondents also maintained that the Claimant's broker was his father, William Husa who had introduced Pearce to Capitol clients through his contacts with Paulson Investment Company. Respondents further maintained that while Claimant claims he was not qualified to purchase

shares of Pearce, he and his wife did indeed earn a substantial income that would make them qualified. Respondents contended that Mr. Kircher made no representation about Pearce to the Claimant. Respondents also contended that William Husa discovered the suitability restrictions ironically after the price of the Pearce stock dropped significantly and called the NASD regarding his options with regards to taking legal action against Pearce for omitting material facts from the Prospectus. Respondents further contended that they believe that the Claimant made a great deal of unreported income through various gambling and card playing games, managing his wife's exotic dancing activities which resulted in tips because his father would brag about it at the firm. Respondents also maintained that the Claimant's own personal activities disclosed a large income when he was arrested and indicted in a major methamphetamine drug sting operation. Respondents further maintained that if the Claimant earned only \$10,400.00 annually, he would not be able to make a \$6,525.00 cash investment in Pearce, as the investment represents 70% of his annual take home income. Respondents contended that they did not sell Units to the Claimant, rather, his father did and the firm did not violate NASD laws rather, was censured. Respondents also contended that they committed no wrongdoing and requested that the claims against them be dismissed.

In a Response to the Answer of Respondents, Claimant alleged that in January of 1994 Respondent Kircher attended a full Due Diligence meeting discussing the Pearce IPO, and met with the lead underwriter Paulson as well as the principals of Pearce. Claimant further alleged that only after this meeting did Respondent Kircher approve the purchase of this IPO to all of its brokers and clients, who were selling it. Claimant asserted that Capitol sold this offering to its clients and received commission for it, even though it knew that it was in direct violation of the NASD by-laws. Claimant further asserted that his account was a single account, and not joint with his ex-wife who at the time had no income. Claimant contended that he borrowed money from his parents for part of the investment and is evidenced by Respondent Kircher's approval of a third party check to pay for the purchase.

In a Rebuttal to Claimant's Response, Respondents maintained that the Claimant took a long time to make this claim, since this particular trade occurred in February of 1994, well over two years ago. Respondents further maintained the Claimant is in a position to know about his account, he is not supposed to have knowledge about facts regarding Capitol and the Pearce underwriting. Respondents contended that the main line responsibility for "knowing your customer" falls with the broker representing the customer, who in this case is his father who had every reason to know whether or not this investment was suitable for his son.

RELIEF REQUESTED

Claimant Michael A. Husa, requested \$10,000.00 in actual damages.

Respondent Capitol Bay Securities Inc., Stephen Kircher and Lisa McCargar, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Peter F. Sloss, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Michael A. Husa on May 23, 1996 and by the Respondents Capitol Bay Securities Inc., Stephen Kircher and Lisa McCargar on June 28, 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 Michael A. Husa against Respondents Stephen Kircher and Lisa McCargar are dismissed in their entirety.
2. The Respondent Capitol Bay Securities, Inc. is liable and shall pay to the Claimant Michael A. Husa \$6,525.00 in actual damages contingent upon Claimant's surrender of 1800 shares and warrants of Pearce Systems International, Inc. to Respondent Capitol Bay Securities, Inc.
3. The parties shall bear their respective costs.
4. 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. The Respondent Capitol Bay Securities, Inc. shall pay to the Claimant Michael A. Husa \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, PETER F. SLOSS, 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: August 30, 1996