

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Tom Friendly

96-02795

Name of Respondent

Investors Associates, Inc. f/k/a Vision Investment Group

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**REPRESENTATION**

For claimant Tom Friendly ("claimant") appeared his representative Joel C. Seltzer, Esq., a sole practitioner located in Union, New Jersey.

Respondent Investor Associates, Inc. did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed: June 28, 1996.

Claimant's Submission Agreement signed on: June 25, 1996.

Statement of Answer filed by respondent on: August 21, 1996.

Respondent's Submission Agreement signed on: August 21, 1996.

**HEARING INFORMATION**

Hearing Dates/Sessions: January 28, 1997 one session

The hearing was conducted at the offices of the National Association of Securities Dealers Regulation, Inc. located at 33 Whitehall Street New York, New York.

**CASE SUMMARY**

Claimant alleged that on or about December 9, 1994 he purchased 100 shares of Dr. Pepper at \$24 1/2 per share from respondent. Claimant further alleged that his account executive, Tom Mandaro, Jr. ("Mandaro"), advised him to purchase 20,000 warrants of American Bingo and

Gaming priced at \$2 7/8 per warrant. Claimant alleged that he agreed to purchase the warrants, however, respondent was not prompt in the execution of the transaction and instead purchased 25,000 warrants at \$2 1/4 per warrant on January 26, 1995. Claimant contended that after the purchase, the warrants immediately dropped in value. Claimant further contended that he was not informed of the associated risks or of the possibility of using a stop-loss order to limit his losses. Claimant also contended that a total of 23,600 of the warrants were sold in September and October of 1995 for a loss of \$32,025.00, not including commissions.

Claimant asserted that respondent assured him that respondent would make up for the losses and told him to purchase 1,000 shares of Advanced Voice Technologies ("AVT") at the IPO price of \$5.00 per share. Claimant further asserted that he agreed to the purchase but that respondent purchased 1000 shares of AVT in the after market for \$14.00 per share. Claimant also asserted that he lost at least \$9,000.00 as a result of this transaction and requested that it be reversed because it was not authorized.

Claimant alleged that respondent sold 500 shares of Union Carbide without his authorization on March 20, 1995.

Claimant further alleged that in September of 1995, he made several purchases of Interiors, Inc. preferred Series A Convertible 10% stock, and Interiors Inc. warrants. Claimant also alleged that he suffered further losses as a result of these purchases. Claimant contended that as a result of the above, he has suffered losses for which the respondent should be held liable.

Respondent maintained that claimant opened his account with it acknowledging that he knew the ins and outs of the securities business. Respondent further maintained that claimant authorized the purchase of 25,000 shares of American Bingo and Gaming, up from the original 20,000 warrants, after the security declined in value. Respondent also maintained that in accordance with claimant's instruction and contrary to Mandaro's advice, the warrants were later sold. Respondent also maintained that AVT was discussed with claimant and that he authorized Mandaro to purchase shares in the after market. Respondent contended that claimant stated that he thought AVT looked real positive, however, that the investment did not turn out as claimant expected. Respondent further contended that claimant instructed it to sell 500 shares of Union Carbide.

Respondent also contended that it is mind-boggling that claimant, a sophisticated investor, suffered through all of the allegations of wrongdoing yet continued to transact business with Mandaro. Respondent asserted that if claimant was experiencing problems, he would have taken reasonable steps to stop the problems. Respondent further asserted that claimant took no such steps. Respondent also asserted that as a result of the above, it should not be held liable.

#### **RELIEF REQUESTED**

Claimant requested \$49,500.00 in actual damages plus interest at the legal rate from the date of the filing of this complaint to the date of the arbitration award.

Respondent requested that the claims be dismissed in their entirety plus costs, fees, expenses, attorney's fees of not less than \$5,000.00 and other and further relief as justice and equity require.

### **OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings concerning respondent Investors Associates, Inc. who failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Investors Associates, Inc. was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Investors Associates, Inc. pursuant to Section 10301 of the NASD Code of Arbitration Procedure.
3. In addition, in accordance with Rules 10310, 10315 and 10318 of the NASD Code of Arbitration Procedure, the panel found that NASD Regulation, Inc. provided respondent Investors Associates, Inc. with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without respondent Investors Associates, Inc., whose absence was unexcused.

On January 27, 1997 at approximately 4:30pm, on behalf of respondent Investors Associates, Inc., David Sayid, Esq., of the law firm of Sayid and Associates, Inc. located in Hackensack, New Jersey, telephonically requested an adjournment of the hearing stating that he would be unable to attend the hearing because he had other matters he had to address and that no substitute counsel was available. Mr. Sayid also stated that the witnesses he intended to call at the hearing were also unavailable. Claimant's counsel, Joel C. Seltzer, Esq., opposed an adjournment. The panel considered and denied respondent Investors Associates adjournment request.

The appearing 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 appearing 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. The claims of the claimant Tom Friendly against respondent Investors Associates are denied in their entirety as there was a lack of evidence to support all claims. The panel found, based on the documentary and testimonial evidence presented, that ratification occurred.
2. The parties shall bear their respective costs and attorney's fees.
3. All other relief requests are denied.

**FORUM FEES**

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

1 sessions x \$400.00                      = \$400.00

Claimant Tom Friendly be and hereby is liable for the sum of \$400.00 representing the total amount of forum fees assessed. Claimant previously deposited \$400.00 with the NASD. Therefore, nothing further is owed to the NASD by the claimant.

**ARBITRATORS' SIGNATURES**

I, Sheldon Finkelstein, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Sheldon Finkelstein  
Public Chairperson

I, William Mechmann, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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William Mechmann, Esq.  
Public Arbitrator

I, Michael Todd Clements, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Michael Todd Clements  
Industry Arbitrator

Date of Decision: March 14, 1997


**ARBITRATORS' SIGNATURES**

I, Sheldon Finkelstein, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Sheldon Finkelstein  
Public Chairperson

I, William Mechmann, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
William Mechmann, Esq.  
Public Arbitrator

I, Michael Todd Clements, do hereby affirm. pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Michael Todd Clements  
Industry Arbitrator

Date of Decision: March 14, 1997

**ARBITRATORS' SIGNATURES**

I, Sheldon Finkelstein, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Sheldon Finkelstein  
Public Chairperson

I, William Mechmann, Esq. do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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William Mechmann, Esq.  
Public Arbitrator

I, Michael Todd Clements, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



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Michael Todd Clements  
Industry Arbitrator

Date of Decision: March 14, 1997