

1198

980163

**AWARD**  
**NASD Regulation, Inc. Office of Dispute Resolution**

---

In the Matter of Arbitration Between

Earl C. Townsend

Claimant,

and

No. 96-03450

\*National City Bank, Indiana and  
National City Trust

Respondents.

---

**REPRESENTATION OF PARTIES**

Claimant, Earl C. Townsend, Esquire of Indianapolis, Indiana, represented himself during these proceedings.

Respondents, National City Bank, Indiana, and National City Trust were represented by Harry John Watson, III, Esquire of Indianapolis, Indiana.

**CASE INFORMATION**

Claimant, Earl C. Townsend, Esquire's Statement of Claim was filed on or about December 11, 1996.

Claimant, Earl C. Townsend, Esquire's Submission Agreement was signed on August 3, 1996.

The NASD has no record of Respondents, National City Bank, Indiana and National City Trust filing a Statement of Answer or Submission Agreement.

### **HEARING INFORMATION**

The hearing was held on October 22, 1997 for two (2) sessions, in Indianapolis, Indiana.

### **CASE SUMMARY**

Earl C. Townsend ("Claimant") alleged that without his consent, National City Bank invested funds which they withdrew from his checking account. Claimant asserted that as he maintained a large checking account of up to \$700,000.00 (Account # 10-8723-03-2) in the National City Bank, Indiana (the "Bank.") He claimed that the woman, who he thought was "in charge of the bank," suggested she would like to take him to lunch to meet some of the "big shots" in the Bank, which Claimant did. The people he met at the lunch suggested they would like to manage his money so that it would make large, tax exempt profits, instead of the one and one-half percent (1½ %) interest he was earning on his account at that time. Although Claimant said that he signed some papers allowing this to occur, Claimant alleged that it was his understanding that his principal in the account would not be used for investment purposes. Claimant contends that the Bank made various unauthorized withdrawals from his accounts, including ones that were \$200,000.00, \$50,000.00 and \$25,000.00. Furthermore, Claimant alleged that when he learned that the Bank was taking money out of his principal account for payment for handling the account, and considered the unauthorized withdrawals, he closed his account at the Bank when he saw a \$701,865.05 amount in his statement. However, Claimant alleged that he received only \$658,877.20, when he terminated the account. Claimant therefore asserted a claim for the difference between these two amounts.

National City Bank, Indiana and National City Trust ("Respondents,") at the hearing of this matter denied any wrongdoing in their handling of Claimant's assets.

### **RELIEF REQUESTED**

Claimant, Earl C. Townsend, requested an award for \$41,000.00 in actual damages.

Respondents, National City Bank, Indiana and National City Trust, at the hearing of this matter requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents National City Bank, Indiana and National City Trust are not members of the NASD and are therefore not required to submit to arbitration. Respondents did however appear at the hearing, answered and testified at the hearing and agreed to voluntarily submit to binding arbitration

and are therefore bound by the determination of the arbitration panel on all issues submitted.

The 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 parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **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. That Claimant, Earl C. Townsend is liable for and shall pay to Respondents, National City Bank, Indiana and National City Trust, all costs related to this action against Respondents pursuant to Indiana law;

2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$400.00 = \$800.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$120.00 and shall retain as forum fees the hearing session deposit of \$400.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Earl C. Townsend. Claimant is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution \$400.00, which equals the \$800.00 forum fees total, minus the \$400.00 hearing session deposit already paid by Claimant.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees of \$400.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Earl C. Townsend.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

**Concurring Arbitrators' Signatures**

/s/ William H. Tobin

January 5, 1998

\_\_\_\_\_  
William H. Tobin, Esq.  
Chairperson  
Public Arbitrator

\_\_\_\_\_  
Dated:

/s/ Stanley G. Rives

January 7, 1998

\_\_\_\_\_  
Stanley G. Rives, Ph.D.  
Panelist  
Public Arbitrator

\_\_\_\_\_  
Dated:

/s/ Richard E. Neal

January 5, 1997

\_\_\_\_\_  
Richard E. Neal  
Panelist  
Industry Arbitrator

\_\_\_\_\_  
Dated: