

NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Name of Claimant

CIBC Wood Gundy Securities Corp.

vs.

Case No.  
96-04429

Name of Respondent

Alpine Associates

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**REPRESENTATION**

For Claimant CIBC Wood Gundy Securities Corp. ("Claimant") appeared Henry Flowers, General Counsel for the firm CIBC Wood Gundy Securities Corp. located in New York, New York.

For Respondent Alpine Associates ("Respondent") appeared Erwin Shustak, of the firm Shustak Jalil and Heller, located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on: October 23, 1996.

Claimant's Submission Agreement signed on: October 23, 1996.

Statement of Answer filed by Respondent on: January 06, 1997.

Respondent's Submission Agreement signed on: January 03, 1997.

**HEARING INFORMATION**

Hearing Date/Sessions:

October 06, 1997

Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

**CASE SUMMARY**

Claimant alleged that on November 30, 1995, Respondent sold them 250,000 shares of Shawmut common stock at a price of \$37.25 per share with a settlement date of December 05, 1995. Claimant further alleged that on December 01, 1995 the Shawmut merger with Fleet was actualized; therefore, on the settlement date Claimant was entitled to receive from Respondent either: (a) 223,050 shares of Fleet common stock and cash proceeds of \$95,911.50 or (b) 250,000 shares of Shawmut common stock. Claimant also alleged that on the December 05, 1995 settlement date, Respondent delivered 223,050 shares of Fleet common stock without the cash proceed of \$95,911.50. Claimant asserted that on January 02, 1996, the clearing corporation, SIAC, charged Claimant the dividend in the amount of \$95,911.50

for the delivery of the 223,050 shares of Fleet common stock made to SIAC on December 05, 1995. Claimant further asserted that to date efforts to collect the proceeds from Respondent have been unsuccessful.

Respondent maintained that Claimant purchased 250,000 shares of Shawmut common stock on November 30, 1995, but that no mention was made of dividend rights for the Shawmut shares purchased. Respondent further maintained that under Rule 235 of the NYSE anyone purchasing shares of Shawmut after November 28, 1995, purchased those shares "ex-dividend" and was not entitled to the dividend paid. Respondent also maintained that Claimant purchased the shares on November 30, 1995, and therefore, was not entitled to the dividend paid.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$95,911.50, plus interest from January 02, 1996 and the costs of this arbitration.

Respondent requested that the Statement of Claim be dismissed in its entirety, plus attorneys' fees, costs, and disbursements.

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

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 original remains 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. Respondent Alpine Associates be and hereby is liable and shall pay to Claimant CIBC Wood Gundy Securities Corp. the sum of \$95,911.50 representing the refund of dividend.
2. Forum fees are to be split equally between the parties.
3. All requests for attorneys' fees are hereby denied.
4. All further requests for relief are hereby denied.

#### **FORUM FEES**

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and have assessed the following forum fees:

2 Sessions x \$600.00 = \$1,200.00


Total Forum Fees = \$1,200.00

1. Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$600.00 representing one-half of the total forum fees assessed. Claimant deposited \$600.00 with the NASD, and therefore, no payment is required of Claimant.
2. Respondent be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$600.00 representing one-half of the total forum fees assessed.
3. Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$300.00 representing the Member Surcharge assessed. Claimant deposited \$300.00 with the NASD, and therefore, Claimant does not owe the Member Surcharge.
4. Respondent be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$300.00 representing the Member Surcharge assessed.

Fees are payable to NASD Regulation, Inc..

**ARBITRATORS' SIGNATURES**

I, Judith R. MacDonald, 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.



Judith R. MacDonald, Esq.  
Industry Chairperson

I, Alvin Gallant, 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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Alvin Gallant  
Industry Panelist

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 Panelist

Date of Decision: December 11, 1997

ARBITRATORS' SIGNATURES

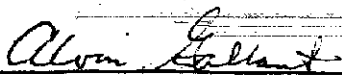
I, Judith R. MacDonald, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Judith R. MacDonald, Esq.  
Industry Chairperson

I, Alvin Gallant, 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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Alvin Gallant  
Industry Panelist

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 Panelist

Date of Decision: December 11, 1997

**ARBITRATORS' SIGNATURES**

I, Judith R. MacDonald, 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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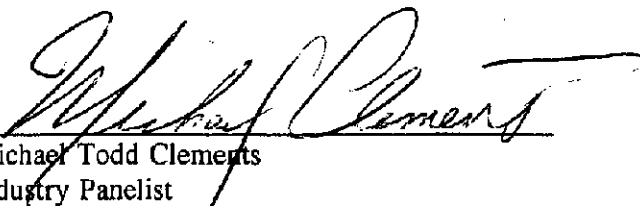
Judith R. MacDonald, Esq.  
Industry Chairperson

I, Alvin Gallant, 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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Alvin Gallant  
Industry Panelist

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 Panelist

Date of Decision: December 11, 1997