

## **AWARD**

**NASD Regulation, Incorporated Office of Dispute Resolution**

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**In the Matter of Arbitration Between**

**George H. Baldwin, Jr., and  
George H. Baldwin, Jr. Revocable Trust,**

**Claimants,**

**and**

**No. 96-04527**

**D.H. Blair & Co., Inc. and Craig Webber,**

**Respondents.**

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### **REPRESENTATION OF PARTIES**

Claimants, George H. Baldwin, Jr. ("Baldwin") and George H. Baldwin, Jr. Revocable Trust (hereinafter collectively referred to as "Claimants"), were represented by Mark T. Keaney, Esquire of Lewis Rice & Fingersh, located in St. Louis, Missouri.

Respondents, D.H. Blair & Company, Incorporated ("D.H. Blair") and Craig Webber ("Webber") (hereinafter collectively referred to as "Respondents"), were represented by Howard M. Wynn, Associate General Counsel of D.H. Blair & Company, Incorporated, located in New York, New York, and by David Wells, Raymond W. Gruender, and Jane E. Schilmoeller, Esquires of Thompson Coburn, located in St. Louis, Missouri.

### **CASE INFORMATION**

Claimants' Statement of Claim was filed on or about October 11, 1996.

Claimants' Amendment to the Statement of Claim was filed on or about February 3, 1997.

George H. Baldwin, Jr.'s Submission Agreement was signed on October 4, 1996.

George H. Baldwin, Jr. Revocable Trust's Submission Agreement was signed on October 4, 1996 by George H. Baldwin, Jr., Trustee.

Respondents' Statement of Answer was filed on or about January 3, 1997.

Respondents' Amended Statement of Answer was filed on or about January 16, 1997.

D.H. Blair & Company, Incorporated's Submission Agreement was signed on January 2, 1997 by John T. McGuire, Sr. V.P. & General Counsel of D.H. Blair & Company, Incorporated.

Craig Webber's Submission Agreement was signed on January 2, 1997.

### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on:      August 20, 1997 for two (2) sessions;  
                                         August 21, 1997 for two (2) sessions;  
                                         August 22, 1997 for two (2) sessions.

The hearing was held in St. Louis, Missouri.

### **CASE SUMMARY**

Claimants brought this action against D.H. Blair and Webber, a registered representative of D.H. Blair, in order to recover losses sustained in a cash account, which was opened with D.H. Blair on or about May 16, 1994. According to Claimants, between approximately April 30, 1996 and May 14, 1996 Baldwin purchased through Respondents 10,000 shares of Integrated Process Equipment Corporation ("IPEC") for a total price of \$315,259.00. Claimants maintained that on May 13, 1996 Baldwin told Webber to purchase 6,000 shares of IPEC at \$33.75, if the stock reached that price. Claimants asserted that on May 17, 1996 Webber's office informed Baldwin that the 6,000 shares of IPEC were purchased on May 14, 1996 for \$34.875. Claimants alleged that Webber then failed to follow a stop-loss order at \$30 on IPEC. They contended that Webber then advised Baldwin not to sell the IPEC at that time since the price was at a low and was sure to come back, and that Webber assured Baldwin that he would take care of Baldwin in connection with a new IPO. After Webber requested more money to invest in the IPO, Baldwin instructed Webber to sell the IPEC immediately, according to Claimants. Claimants reported that Webber sold the 10,000 shares of IPEC between July 16, 1996 and July 18 for a total sale price of \$113,684.76.

Claimants further alleged that Webber failed to execute a sale order. According to Claimants, on or about June 12, 1996 Baldwin advised Webber to sell 142,860 shares of Microcarb Corporation stock. Claimants asserted that, without Baldwin's authorization, Webber quit selling said stock on June 14, 1996, at which time it was selling for \$1.75 per share. Claimants reported that Webber sold the balance of the Microcarb stock on the following dates at the following prices: July 1, 1996, 10,500 shares at \$1.406 per share; July 19, 1996, 20,000 shares at \$.844 per share; and July 25, 1996, 27,260 shares at \$.844 per share.

Claimants also alleged that Webber failed to execute a sale order with respect to shares of Premier Laser Corporation ("Premier"). Claimants stated that on July 17, 1996 Baldwin instructed Webber to sell 15,000 shares of Premier. According to Claimants, on July 23, 1996 Webber began to sell the Premier stock, but he only sold 2,000 shares, which was at a price of \$15.625 per share. Claimants asserted that Webber did not sell the rest of the Premier stock until on or about September 17, 1996, which was at \$13.01 per share.

Unless otherwise admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: The Statement of Claim fails to state a cause of action upon which relief may be granted; Claimant never notified Respondents either orally or in writing of any complaints arising out of his account and has waived his claims and is estopped from asserting them against the Respondents; Claimant ratified any alleged acts by Respondents due to his failure to timely complain; Claimant failed to mitigate his damages; Claimant's claims are barred by the applicable statutes of limitations; Claimant's claims are barred by the doctrine of laches; Claimant had full knowledge of all material facts concerning his accounts including the positions held and the transactions made therein and accordingly, Claimant is estopped from bringing this claim; Claimant authorized and directed the execution of all transactions in his accounts and accordingly, is estopped from bringing this claim; Claimant is a sophisticated investor and assumed the risk of investing in the securities market; Claimant's losses, if any, were caused by his own conduct and/or the conduct of others for which Respondents are not responsible; all risks concerning Claimant's investments were properly disclosed to Claimant, and he knowingly, willingly, and voluntarily assumed those risks; Claimant's claims are barred by the Statute of Frauds; any losses suffered by the Claimant were the result of market conditions and/or fluctuations normally associated with investments in the securities markets; Claimant's claims are barred by the doctrines of waiver and ratification; at all times, Respondents conducted their business in a professional manner and acted in good faith, without knowledge of or participation in any alleged improper activity; and Claimant did not rely to his detriment on any action of Respondents, or on any act or omission legally attributable to Respondent.

### **RELIEF REQUESTED**

Claimants requested an award for compensatory damages of \$272,047.24, plus legal expenses incurred in connection with prosecution of this claim, plus costs of this arbitration proceeding.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and expenses incurred in connection with this arbitration.

### **OTHER ISSUES CONSIDERED AND 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(s) remain on file with the NASD Regulation, Incorporated 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 the Statement of Claim is denied in its entirety with prejudice;
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, denied with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were six (6) hearing sessions  $\times$  \$750 = \$4,500 in forum fees. Pursuant to § 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 § 10332(c) of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by George H. Baldwin, Jr. and George H. Baldwin, Jr. Revocable Trust.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable member surcharge of \$200 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by D.H. Blair & Company, Incorporated.

Additional forum fees in the amount of \$3,750 are assessed by the arbitrators against D.H. Blair & Co., Inc.

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

**Concurring Arbitrators' Signatures**

William S. Rader  
William S. Rader  
Chairperson  
Public Arbitrator

/s/

October 6, 1997  
Dated:

Richard L. Puhl  
Richard L. Puhl  
Panelist  
Public Arbitrator

/s/

October 8, 1997  
Dated:

John N. Reidy  
John N. Reidy  
Panelist  
Industry Arbitrator

/s/

October 23, 1997  
Dated:

**For NASD use only:**

**Date Award was served on the parties: October 23, 1997**