

**AWARD**

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

**In the Matter of Arbitration Between**

**Rex B. Wherry and  
Wray H. Wherry,  
Claimants,**

**and**

**No. 96-05579**

**D.E. Frey & Co., Inc., and  
Eric Aronson,  
Respondents.**

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**REPRESENTATION OF PARTIES**

Claimants, Rex B. Wherry and Wray H. Wherry, were represented by Joe C. Holzer, Esquire of Butler & Binion, L.L.P., in Houston, Texas.

Respondents, D.E. Frey & Co., Inc. and Eric Aronson were represented by Mark J. Appleton, Esquire of D.E. Frey & Company, Inc. in Denver, Colorado.

**CASE INFORMATION**

Claimants, Rex B. Wherry and Wray H. Wherry's Statement of Claim was filed on or about December 17, 1996. Claimants, Rex B. Wherry and Wray H. Wherry's Submission Agreements were both signed on January 6, 1997.

Respondents, D.E. Frey & Co., Inc. and Eric Aronson's Statement of Answer was filed on or about March 21, 1997. Respondent, D.E. Frey & Co., Inc.'s Submission Agreement was signed on March 3, 1997 by Mark J. Appleton, Senior Vice President and General Counsel. Respondent, Eric Aronson's Submission Agreement was signed January 16, 1998.

**HEARING INFORMATION**

The hearing was held on January 15, 1998 for two (2) sessions, and on January 16, 1998 for one (1) session in Houston, Texas.

**CASE SUMMARY**

In the Statement of Claim, Rex B. Wherry and Wray H. Wherry ("Claimants") asserted that their account was mishandled by D.E. Frey & Co., Inc. (D.E. Frey") and its agent, Eric Aronson ("Mr.

Aronson") (together, "Respondents") after they, as unsophisticated investors, met with Respondents in 1993 to discuss the investment of funds which they had inherited from their parents. Claimants said that each of their annual incomes was less than \$25,000. Based allegedly upon Mr. Aronson's recommendations that they invest in U.S. Lending Corporation in the form of a debenture which he assured would be fully collateralized and would be a safe investment, Rex Wherry invested \$70,000 and Wray Wherry invested \$50,000 in U.S. Lending Corporation. Claimants asserted that when U.S. Lending Corporation was faced with financial difficulties, Mr. Aronson persuaded them to accept U.S. Lending's offer to exchange their debentures for preferred stock, representing that it was in their best interest to do so. When U.S. Lending went into bankruptcy, Claimants allegedly only realized a small percentage of the principal funds which they had originally invested without any return for lost interest or income. Claimants also contended that Mr. Aronson persuaded Rex Wherry to invest an additional \$54,000 of his inheritance in a stock account, which Claimant asserted was devalued to \$16,000 due to unsuitable investments, misrepresentations and churning by the Respondents. Claimants asserted that Respondents conduct constituted: breach of contract, negligence, negligent misrepresentation, fraud, and violation of the Texas Deceptive Trade Practices-Consumer Protection Act.

Respondents denied any wrongdoing on either the part of D.E. Frey & Co. or Eric Aronson. Respondents stated that the Claimants were not unsophisticated investors, and in fact came to D.E. Frey seeking more aggressive investments after leaving other brokerage houses, where they had been investing for more than ten (10) years. Respondents asserted that the Claimants made all of their own investment decisions; that Mr. Aronson never had any discretionary control over the accounts, and that Mr. Aronson disclosed not only all relevant documentation with respect to U.S. Lending, but also the fact that the investment was high risk. Furthermore, Respondents disputed the fact that U.S. Lending was in bankruptcy, as the ultimate outcome of the reorganization of U.S. Lending was unclear. Respondents said that Claimants were only complaining with the benefit of hindsight, even though the potential opportunity for auto finance companies in the market seemed reasonable at the time. Respondents alleged that the Claimants' alleged basis for recovery was without merit and unsupported by the law; that allegations by the Claimants as to other investments in their accounts at D.E. Frey were equally without merit; and that Claimants assertions were in general, groundless and frivolous.

#### **RELIEF REQUESTED**

Claimants, Rex B. Wherry and Wray H. Wherry, requested an award for at least \$110,000 in actual damages plus attorneys' fees and other costs related to this action, and any other relief that the panel deems equitable.

Respondents, D.E. Frey & Company, Inc., and Eric Aronson, requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

**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, 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 D.E. Frey & Company, Inc., and Eric Aronson are jointly and severally liable for and shall pay to Claimant, Rex B. Wherry, the sum of \$96,000 in actual damages and the sum of \$25,000 in prejudgment interest up to January 16, 1998, for a total sum of \$121,000, and simple interest at a rate of six percent (6%) in post-judgment interest on the total sum of \$121,000 accruing beginning from the date this award is served upon the parties until paid;
2. That D.E. Frey & Company, Inc., and Eric Aronson are jointly and severally liable for and shall pay to Claimant, Wray H. Wherry, the sum of \$53,000 in actual damages and the sum of \$14,000 in prejudgment interest up to January 16, 1998, for a total sum of \$67,000, and simple interest at a rate of six percent (6%) in post-judgment interest on the total sum of \$67,000 accruing beginning from the date this award is served upon the parties until paid;
3. 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 \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were three (3) hearing sessions  $\times \$750 = \$2,250$  in forum fees. Pursuant to Section 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 at a pre-hearing conference with an Arbitrator, which lasts four (4) hours or less.

Pursuant to Section 10332(c) of the Code, the NASD Regulation, Inc., 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, Inc., Office of Dispute Resolution by Claimants, Rex. B. Wherry and Wray J. Wherry.

Pursuant to Section 10332© of the Code, Respondents, D.E. Frey & Company, Inc., and Eric

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Aronson, are jointly and severally liable for and shall pay the sum of \$1,500.00 to NASD Regulation, Inc., Office of Dispute Resolution for forum fees. Furthermore, Respondents, D.E. Frey & Company, Inc., and Eric Aronson, are jointly and severally liable for and shall pay to Claimants, Rex B. Wherry and Wray H. Wherry, the sum of \$750 as reimbursement of the hearing session deposit.

Pursuant to Rule 10333 of the Code, Respondent, D.E. Frey & Company, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the member surcharge of \$350.

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

**Concurring Arbitrators' Signatures:**

W. Merrill Glasgow  
W. Merrill Glasgow  
Chairperson  
Public Arbitrator

February 23, 1998  
Date

Frank M. Romano  
Frank M. Romano  
Panelist  
Public Arbitrator

February 18, 1998  
Date

Larry J. Sklar  
Larry J. Sklar  
Panelist  
Industry Arbitrator

February 20, 1998  
Date

For NASD use only:  
Date Award was served on the parties: February 23, 1998