

## **AWARD**

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

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In the Matter of Arbitration Between

Norcell D. Haywood

Claimant,

and

No. 96-05712

International Assets Advisory Group

Respondent.

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#### **REPRESENTATION OF PARTIES**

Claimant, Norcell D. Haywood, was represented by Sally C. Helppie, Esquire and David R. Gibson, Esquire of Bell & Nunnally, PLLC located in Dallas, Texas.

Respondent, International Assets Advisory Corporation ("International Assets"), was represented by Steven J. Berry, Esquire of Gardere & Wynne, L.L.P., located in Dallas, Texas.

#### **CASE INFORMATION**

Claimant, Norcell D. Haywood's Statement of Claim was filed on or about February 6, 1997 and an Amended Statement of Claim was filed (with the arbitrators concurrence) at the Hearing.

Claimant, Norcell D. Haywood's Submission Agreement was signed on December 17, 1996.

Respondent, International Asset's Statement of Answer was filed on or about April 1, 1997.

Respondent, International Asset's Submission Agreement was signed on March 13, 1997.

#### **HEARING INFORMATION**

There was pre-hearing on October 28, 1997 for one (1) session.

The hearings were held on October 29 and 30, 1997 for two (2) sessions each day, on October 31, 1997 for one (1) session, on November, 3, 4, 5 and 6 for two (2) sessions each day, and finally, on November 7, 1997 for one (1) session. The hearing was held in Dallas, Texas.

### CASE SUMMARY

Norcell D. Haywood ("Claimant.") alleged damages of \$750,000.00 due to International Assets' ("Respondent's") unauthorized and improper trades on his account. Claimant asserted that in 1991, Genia Sander ("Sander.") a "broker/dealer" with International Assets, solicited his investment business after Claimant called Respondent about an article he read in a financial newsletter [Amended Statement of Claim]. Claimant stated he was an inexperienced investor, never having invested in the stock market, with most of his assets in bank Certificates of Deposit. Three separate episodes formed the basis of Claimant's allegations. First, Claimant stated that on at least two occasions in the first part of 1992, he purchased shares of dividend-producing Unimar Company Indonesian Participation Certificates ("Unimar.") at the behest of the Respondent. Claimant stated that in or about October, 1992, on the advice of Sander, he allowed the sale of 9,000 units of Unimar, and thereafter on December 2 and 4, 1992, Sander made the unauthorized sale of 35,000 shares, which she later told Claimant she could not recover. Claimant said that the value of these shares increased later, and that Sander's unauthorized action caused him to suffer lost profits.

The second episode, in which Claimant alleged Respondent's wrongdoing, centers around the IPTimberland Limited Class A Depositor Units ("IPT.") which he said Sanders advised him to purchase. Claimant asserted that he had authorized the purchase of IPT shares at \$24.00, and that Sander purchased the shares on December 14, 1992 at \$24.25, although due to an announcement by an analyst that the shares were overvalued, IPT dropped to \$17.75 the day after Sander's purchase. Claimant stated that Sander had reason to know of this report, and should not have purchased the IPT shares for Claimant, without first informing him of the possible decline in its' value.

Thirdly, and finally, Claimant asserted that after he asked that his account be taken away from Sander, and transferred to another broker at International Assets, he informed his new broker/dealer, Rick Pfeiffer ("Pfeiffer.") that he was interested in Site Based Media, and asked him to research the stock and give Claimant his impressions. Claimant said that Pfeiffer called back several days later and fully endorsed Site Based Media, and therefore, Claimant agreed to the purchase of 25,000 shares of Site Based Media on July 30, 1993, and additional shares over the next week. Claimant stated that Pfeiffer then executed the purchase of 165,000 shares, when Claimant signed a form acknowledging the purchase of the Site Based Media shares was "unsolicited." Thereafter, on September 8, 14, 15, 1993, Claimant said that he purchased through International Assets, 67,000 additional shares of Site Based Media, bringing his total purchases to \$219,236.20 of Site Based Media. Claimant asserted that Respondent's failure to properly investigate Site Based Media, a company in substantial difficulty, saddled him with shares of Site Based Media which essentially have no value, and caused him to finally transfer his account from International Assets. Claimant alleges that Respondent's conduct constituted violations of federal and state securities laws, negligence, gross negligence, breach of industry standards, breach of contract, breach of fiduciary duty, violations of the Texas Deceptive Trade Practices--Consumer Protection Act, unsuitability, fraud, failure to investigate, failure to disclose, respondeat superior and negligent failure to supervise.

Respondent denied any wrongdoing or impropriety with respect to the handling of Claimant's account. The Respondent stated that Claimant's allegations lacked foundation in law and in fact, and that Claimant was attempting, in bad faith, to have International Assets guarantee the risks Claimant took in investing in the stock market. First, with respect to Claimant's purchase of Unimar units, Respondent pointed to Claimant's actions which validated his authorization of the sale of Unimar, the inconsistencies in his pleadings to courts prior to this action, and the fact that he actually profited \$50,000.00 in the sale of those stocks. Second, with respect to the IPT shares, Respondent said that not only did the shares rebound after their decline to the \$17.75 price, but Claimant failed to reveal that he had been purchasing IPT since 1991, thereby making Claimant aware of IPT's volatility and reaping considerable distributions therefrom. Furthermore, Respondent alleged that it could not be held liable for Claimant's retention of these shares, and the losses he then suffered. Finally, Respondent stated that Pfeiffer warned Claimant of the riskiness of investing in Site Based Media, and that he asked Claimant to sign the non-solicitation letter, especially due to the fact that Claimant wished to invest in a speculative, "penny-stock" which Respondents did not endorse.

Respondent, International Assets, specifically denied Claimant's right to recover under the applicable Statute of Limitations, failure to mitigate his damages, the Doctrines of Waiver, Estoppel, Laches and Ratification, and the Doctrine of Unclean Hands. Furthermore, Respondent asserts that Claimant's allegations are not specific enough to answer to, and that his calculation of damages is unclear and incorrect.

#### **RELIEF REQUESTED**

Claimant, Norcell D. Haywood, pursuant to his Supplemental Statement of Claim, requested an award for \$750,000.00 in compensatory damages and \$2,250,000.00 in punitive damages, as well as costs and attorneys' fees. The Amended Statement of Claim revised the request for compensatory damages to an amount in excess of \$311,260.00.

Respondent, International Assets Advisory Corporation, 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**

Upon review of the file and the representations made by/on behalf of Claimant, Norcell D. Haywood, the undersigned arbitrators have determined that Respondent, International Assets Advisory Corporation, has been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent, International Assets Advisory Corporation, had received due notice of the hearing as required under § 10318 of the Code.

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 Respondent, International Assets Advisory Corporation is liable for and shall pay to Claimant, Norcell D. Haywood, the sum of \$99,844.70 in compensatory damages, and shall pay eight percent (8%) interest annually on this amount beginning with the date that Respondent, International Assets Advisory Corporation, is notified of this Award in writing.
2. That Respondent, International Assets Advisory Corporation is liable for and shall pay to Claimant, Norcell D. Haywood, the sum of \$100,000.00 in Attorney's fees pursuant to Texas law [see Amended Statement of Claim.]
3. 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.

### FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 and there were Fourteen (14) hearing sessions x \$1,000.00 = \$14,300.00 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 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee of \$250.00 and shall **retain** as forum fees the hearing session deposit of \$1,000.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Norcell D. Haywood. Respondent, International Assets Advisory Corporation is liable for and shall pay the outstanding forum fees of \$13,300.00 (= \$14,300.00 forum fees - the \$1,000.00 hearing session deposit previously paid by Claimant Norcell D. Haywood) to NASD Regulation, Inc., Office of Dispute Resolution. Respondent, International Assets Advisory Corporation is liable for and shall reimburse Claimant, Norcell D. Haywood, \$1,000 for his previously paid hearing session deposit.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, International Assets Advisory

Corporation.

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

Concurring Arbitrators' Signatures

/s/ Daniel A. Kile

December 20, 1997

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Daniel A. Kile, Esq.  
Chairperson  
Public Arbitrator

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Dated:

/s/ Phillip I. McConnell

December 19, 1997

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Phillip I. McConnell, Esq.  
Panelist  
Public Arbitrator

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Dated:

/s/ Stephen C. Thayer

January 8, 1998

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Stephen C. Thayer, Esq.  
Panelist  
Industry Arbitrator

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Dated: