

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

AZ Investment Fund

and

97-00004
Phoenix, Arizona

Name of Respondents

First Associated Securities Group Inc.
Round Hill Securities Inc.
Brent Pulver

REPRESENTATION OF PARTIES

AZ Investment Fund ("**Claimant**") was represented by Michael Salcido, Esq., Renaud, Cook & Drury, P.A., Phoenix, Arizona.

First Associated Securities Group Inc. ("**Respondent FAS**") did not appear at the hearing.

Round Hill Securities Inc. ("**Respondent**") was represented by Jeffrey K. Compton, Esq., Markun Zusman & Compton LLP, Los Angeles, California.

Brent Pulver ("**Respondent**") was represented by Jon A. Titus, Esq., Titus Brueckner & Berry PC, Scottsdale, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about January 2, 1997. Submission Agreement of Claimant AZ Investment Fund was signed on December 10, 1996 by Kendall Oltrogge and John K. Jensen.

Respondents First Associated Securities Group Inc. and Brent Pulver's Answer and Counterclaim was filed on or about August 22, 1997.

Answer of Respondent Round Hill Securities Inc. was filed on or about April 1, 1997. Submission Agreement of Respondent Round Hill Securities Inc. was signed on April 1, 1997 by Robert S. Minka.

CASE SUMMARY

Claimant asserted the following claims against Respondents;

1. Securities fraud, in violation of ARS §44-1991.
2. Fraud.
3. Sale of unregistered securities, in violation of ARS §44-1841.
4. Dishonest and unethical conduct as defined in the Arizona Securities Act, AAC R14-4-130.
5. Breach of fiduciary duty and contract.
6. Negligent supervision and/or failure to supervise.
7. Negligent misrepresentation.
8. Negligence.

Specifically, Claimant alleged:

On or about June 14, 1996 FAS and Pulver sent AZIF a Prospectus for a stock called Paradigm Medical Industries, Inc. (Paradigm). This prospectus was sent to Mr. Jensen at his home in Scottsdale, Arizona.

FAS and Pulver recommended that AZIF purchase this stock and promised to get AZIF shares in the initial public offering (IPO). FAS and Pulver told AZIF that the stock would immediately increase in value upon going public, and that AZIF would make a certain and significant profit. AZIF said it would "consider" the investment.

FAS and Pulver told AZIF that it would be the "market maker" of this stock, which was not true. FAS and Pulver also told AZIF that the stock was two (2) to three (3) times "oversold", and that it would have great "liquidity". Those statements were also false.

FAS and Pulver had instructed AZIF to open the Round Hill account with a Colorado address, even though they knew that AZIF and its owners were based in Arizona. It turns out that Paradigm stock was not registered in Arizona, and could not be sold there legally. FAS and Pulver had AZIF open the Round Hill account with a Colorado address to circumvent the Arizona Securities Act, which prohibits the sale of unregistered securities within or from Arizona.

On or about July 19, 1996 FAS and Pulver called Round Hill and spoke with AZIF's broker and/or the broker's assistant. They instructed Round Hill to purchase Paradigm stock for the AZIF account. On July 19, 1996, Round Hill bought 25,000 shares of Paradigm for the AZIF Round Hill account. The shares were purchased at \$6.25 per share, for a total investment of \$156,250.00. Round Hill did not receive the required written authorization from Messrs Jensen and Oltrogge before making this, the first, purchase in the account.

On August 5 and 7, 1996 AZIF voided and repudiated the trade. Instead of reversing the trade, as the law required, Round Hill raided AZIF's account and liquidated several of its positions. When AZIF closed its account, Round Hill sent a check for about \$48,000.00. As such, AZIF suffered damages of about \$99,000.00 because of Respondents' improper actions.

Respondents FAS and Pulver denied the allegations set forth in the Statement of Claim. These Respondents specifically stated as follows:

Respondents alleged that Claimant expressly ordered, approved, authorized, participated in and ratified the acts and transactions complained of and upon which recovery is sought, and Claimant is, accordingly, precluded from any recovery herein.

More specifically, Respondents allege that Claimant and its principals orchestrated the acts of which the Statement of Claim complains. Respondents allege that Claimant directed Respondent Round Hill Securities to deliver 25,000 shares of Paradigm Medical Industries, Inc. to a delivery versus payment ("DVP") account established by Claimant at Bear, Stearns Securities Corp. ("Bear Stearns"), for sale of the shares to Bear Stearns and subsequent sale to Claimant from the very same DVP account. Respondents further allege that, while Claimant and its principals are residents of the State of Colorado, Claimant nevertheless directed Round Hill to sell the Paradigm shares to Claimant using Claimant's Arizona address, in order to facilitate the transfer of the Paradigm shares to Claimant via the DVP account at Bear Stearns.

Respondent FAS, in its Counterclaim alleged as follows:

On or about July 22, 1996, John Jensen and Jennifer Jensen, the principals of AZIF, committed to purchase and ordered 50,000 shares of Paradigm Medical Industries, Inc. ("Paradigm") from FASG at \$6.25 per share, for total purchase price of 312,500.00. Notwithstanding their commitment, the Jensens and AZIF paid FASG for only one-half of the shares they ordered and committed to purchase. The Jensens and AZIF paid FASG for only 25,000 shares at a total price of \$156,250.00, and reneged on the balance. The Jensens have failed and refused to pay for the other 25,000 shares, or any portion thereof.

Respondent Round Hill denied the allegations set forth in the Statement of Claim. Respondent Round Hill stated as follows:

Round Hill was neither an underwriter nor a member of the selling group of Paradigm Medical Industries, Inc. ("Paradigm"). In addition, Round Hill did not solicit the Paradigm trade. The Paradigm prospectus was provided solely by Respondents First Associated Securities Group, Inc. ("FAS") and Brent Pulver ("Pulver") directly to Claimant. The allocation of shares in the initial public offering of Paradigm, and the execution of the

purchase, were made by Respondents FAS and Pulver at the direction of Claimant. Round Hill issued a confirmation in its capacity as agent of Bear Stearns Securities Corp. ("Bear Stearns"), the clearing broker. The disputed trade was not solicited, recommended or directed by Round Hill.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested the following relief:

1. Compensatory damages to be proven at hearing, but at least \$99,000.00;
2. Pre and post judgment interest until the Award is paid in full;
3. Its costs and attorneys' fees incurred herein, including all NASD filing and expert witness fees, pursuant to A.R.S. §§12.341.01 and 44-2001;
4. Punitive damages in an amount to be determined at the hearing in this matter; and
5. Such other and further relief as is deemed just and proper.

Respondent Round Hill requested that the claims against it be dismissed and that the Claimant be required to pay all of Respondent Round Hill's costs and attorneys' fees associated with these claims.

Respondents FAS and Pulver requested the following relief:

1. That Claimant take nothing by its Claim;
2. That Respondents be awarded their costs of defending this frivolous action, including reasonable attorneys' fees incurred; and
3. All other relief which is just and equitable under the circumstances.

In its Counterclaim, Respondent FAS requested an award of \$33,184.55, plus interest, costs, attorneys' fees, and all other relief which is just and equitable under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent First Associated Securities Group Inc has been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent First Associated Securities Group Inc. has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents First Associated Securities Group Inc. and Brent Pulver did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to

arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, Respondent Pulver having appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

At the hearing, Respondent Pulver requested permission to join as a Claimant in the Counterclaim asserted by Respondent FAS. After hearing argument presented on behalf of the parties, the Arbitration Panel granted the request.

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 Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted in this matter shall be and hereby are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claim, motions and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

| | |
|--|------------|
| Initial claim filing fee | = \$150.00 |
| Counter claim/Cross claim/Third Party Claim filing fee | = \$500.00 |

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are First Associated Securities Group Inc. and Round Hill Securities Inc.

Member surcharge = \$300.00

Adjournment Fees

Adjournments requested during these proceedings:

February 18 & 19, 1998, adjournment requested by the parties to mediate (waived) = \$ 500.00
November 4-6, 1999, adjournment requested by Respondent FAS = \$ 500.00
May 19 and 20, 2003, adjournment by requested by Respondent Pulver (waived) = \$ 500.00
May 19 and 20, 2003, adjournment by requested by Respondent Pulver = \$1,000.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|-------------------|
| Two (2) Pre-hearing session(s) with Panel x \$500.00 | = \$1,000.00 |
| Pre-hearing conference(s): | |
| November 6, 2000 | 1 session |
| May 19, 2003 | 1 session |
| Four (4) Hearing sessions x \$500.00 | = \$2,000.00 |
| Hearing Date(s): | |
| September 16, 2003 | 2 sessions |
| <u>September 17, 2003</u> | <u>2 sessions</u> |
| Total Forum Fees | = \$3,000.00 |

The Arbitration Panel has assessed \$1,500.00 of the forum fees to AZ Investment Fund.
The Arbitration Panel has assessed \$1,500.00 of the forum fees to First Associated Securities Group Inc.

Fee Summary

Claimant, AZ Investment Fund, shall be and hereby is liable for:

Initial Filing Fee = \$ 150.00

| | |
|-------------------------------------|--------------|
| <u>Forum Fees</u> | = \$1,500.00 |
| Total Fees | = \$1,650.00 |
| <u>Less payments</u> | = \$ 650.00 |
| Balance Due NASD Dispute Resolution | = \$1,000.00 |

Respondent, First Associated Securities Group Inc., shall be and hereby is liable for:

| | |
|-------------------------------------|--------------|
| Counterclaim Filing Fee | = \$ 500.00 |
| Member Fees | = \$ 300.00 |
| Adjournment Fee | = \$ 500.00 |
| <u>Forum Fees</u> | = \$1,500.00 |
| Total Fees | = \$2,800.00 |
| <u>Less payments</u> | = \$ 500.00 |
| Balance Due NASD Dispute Resolution | = \$2,300.00 |

Respondent, Round Hill Securities Inc., shall be and hereby is liable for:

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|-------------------------------------|-------------|
| Member Fees | = \$ 300.00 |
| Adjournment Fee | = \$ 0.00 |
| <u>Forum Fees</u> | = \$ 0.00 |
| Total Fees | = \$ 300.00 |
| <u>Less payments</u> | = \$ 300.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent, Brent Pulver, shall be and hereby is liable for:

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|-------------------------------------|--------------|
| Adjournment Fee | = \$1,000.00 |
| <u>Forum Fees</u> | = \$ 0.00 |
| Total Fees | = \$1,000.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$1,000.00 |

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Richard Lieberman, Esq. - Public Arbitrator, Presiding Chair
Howard W. Shannon - Public Arbitrator
Paul C. Bookidis - Non-Public Arbitrator

NASD Dispute Resolution, Inc.

Arbitration No. 97-00004

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Concurring Arbitrators:

/s/ Richard Lieberman

Richard Lieberman, Esq.

Public Arbitrator, Presiding Chair

September 17, 2003

Signature Date

/s/ Howard W. Shannon

Howard W. Shannon

Public Arbitrator

September 17, 2003

Signature Date

/s/ Paul C. Bookidis

Paul C. Bookidis

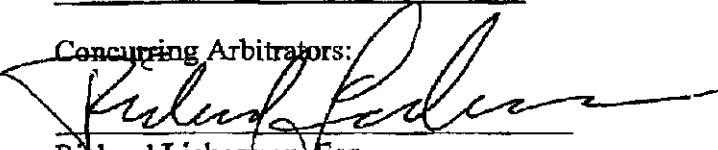
Non-Public Arbitrator

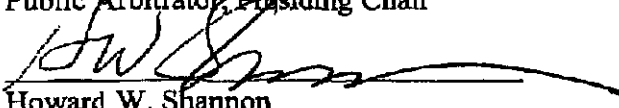
September 17, 2003

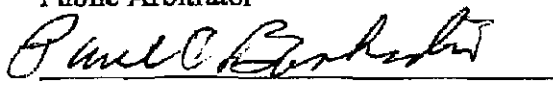
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 97-00004
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Public Arbitrator, Presiding Chair


Howard W. Shannon
Public Arbitrator


Paul C. Bookidis
Non-Public Arbitrator

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