

**AWARD**

**NASD Regulation, Inc.**

---

In the Matter of the Arbitration Between

Name of Claimant

Jerry L. Womack

and

Case Number 98-00448

Name of Respondent

Foster Jeffries Securities Corporation

---

**REPRESENTATION OF PARTIES**

Jerry L. Womack (hereafter referred to as "Claimant") appeared pro se.

Foster Jeffries Securities (hereafter referred to as "Respondent") was represented by Debra M. Snyder, Esq. of Goldstein & DiGioia, LLP, located in New York, New York until August 13, 1998. Yuval H. Marcus, Esq. of Anderson & Rottenberg, P.C., located in New York, New York, represented the Respondent from August 27, 1998 until October 19, 1998. From approximately December 29, 1998 until May 20, 1999, Respondent was represented by Scott M. Zucker, Esq., located in Lake Success, New York. No one appeared on behalf of the Respondent at the hearing on May 27, 1999.

**CASE INFORMATION**

The Statement of Claim of Claimant was filed on or about February 4, 1998.

The Submission Agreement of Claimant was signed on January 29, 1998.

The Statement of Answer of Respondent was filed on or about June 5, 1998.

The Submission Agreement of Respondent was signed on March 24, 1998 by George M. Greco, Jr., President.

### HEARING INFORMATION

Pre-hearing conferences were held on October 1, 1998 for one (1) hearing session and on March 15, 1999 for one (1) hearing session.

The hearing was held in Oklahoma City, Oklahoma on May 27, 1999 for one (1) hearing session.

### CASE SUMMARY

Claimant alleged that Respondent made an unauthorized purchase of 14,000 shares of RT Industries, Inc., now known as U.S. Automotive Manufacturing, Inc. In the Fall of 1997, Claimant had an individual account at Foster Jeffries Securities Corporation and an account in his son's name, Stephen L. Womack, as Trustee for the Womack Irrevocable Trust. On October 13, 1997, Claimant instructed Respondent, through his broker, Thomas Marinovich, to liquidate his 5000 shares of Multimedia Games, Inc. at \$15 per share. During that conversation, Mr. Marinovich allegedly tried to persuade Claimant to invest the proceeds in RT Industries, Inc. but Claimant declined. Claimant stated that the Trust account had previously bought 2,000 shares of RT Industries, Inc. and that was all Claimant wanted. Claimant directed Mr. Marinovich to send him a check for the proceeds of the sale of Multimedia and he said he would do so.

On October 16, 1997, Claimant received two confirmation slips indicating that he sold Multimedia Games, Inc. for \$74,980 and purchased 14,000 shares of RT Industries, Inc. for \$72,642.50. Claimant immediately called Mr. Marinovich and informed him that he had not authorized the purchase of RT Industries and again asked him to remit a check for the proceeds of the sale of Multimedia stock. Mr. Marinovich allegedly told Claimant to disregard the confirmation of the purchase. Despite several oral and written demands in October and November of 1997, Claimant has not received a check for the proceeds of the sale of Multimedia. Claimant requested reimbursement in the amount of \$72,642.50 plus expenses and punitive damages for the unauthorized and unethical acts of Respondent and Mr. Marinovich.

Respondent denied the allegations set forth in the Statement of Claim. Respondent asserted many affirmative defenses including, but not limited to, failure to state claims upon which relief may be granted; claims were barred by the applicable statutes of limitation; claimant's knowledge and voluntarily assumption of any trading risks in his account was the sole and proximate cause of the alleged damage; no fiduciary duty existed between the parties; Claimant was barred from recovery under Hanifen, Imhoff Clearing Corporation Agreements, trade confirmations, doctrines of ratification, account stated, estoppel, waiver and laches; and failure to exercise the degree of care over his investments which an ordinary, prudent investor would exercise.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$72,642.50 in actual damages, an undisclosed amount of punitive damages and expenses.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

### **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 Foster Jeffries Corporation had been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Foster Jeffries Corporation had 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.

### **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 Foster Jeffries Securities Corporation is liable for and shall pay to Claimant Jerry L. Womack the sum of \$38,942 in actual damages; \$6,035 in interest; and \$100,000 in punitive damages;
2. In deciding to award punitive damages, the undersigned arbitrators considered the pleadings, the testimony and the evidence presented by the parties; and
3. Other than forum fees addressed below, all claims and relief requests not specifically awarded are denied in their entirety and dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session. There were three (3) hearing sessions x \$500 = \$1,500 in forum fees. Pursuant to Rule 10332(b) of the 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.

NASD Regulation, Inc. Office of Dispute Resolution  
 Arbitration No. 98-00448  
 Award Page 4 of 4

Pursuant to Rule 10332(c) of the Code, the NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously paid to the NASD Regulation, Inc. by the Claimant. Respondent Foster Jeffries Securities Corporation is liable for and shall pay to the NASD Regulation, Inc. the amount of \$1,500 in forum fees.

Respondent Foster Jeffries Securities Corporation is liable for and shall pay to the NASD Regulation, Inc. postponement fees in the amount of \$500 in accordance with Rule 10319 of the Code.

### OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Foster Jeffries Securities Corporation shall pay to the NASD Regulation, Inc. the \$1,000 member surcharge previously invoiced. Furthermore, Respondent Foster Jeffries Securities Corporation shall pay to the NASD Regulation, Inc. the \$600 pre-hearing processing fees.

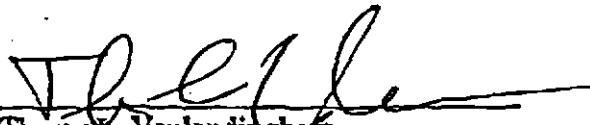
Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures:

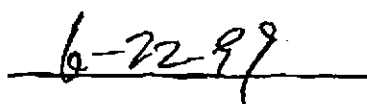
Dated:

\_\_\_\_\_  
 Dennis S. Boxeur, Esq.  
 Public Arbitrator, Presiding Chair

\_\_\_\_\_  
 Cleve W. Powell, Esq.  
 Public Arbitrator, Panelist

  
 Theron L. Vanlandingham  
 Industry Arbitrator, Panelist

For NASD use only:  
 Date served:

  
 6-22-99

NASD Regulation, Inc. Office of Dispute Resolution  
 Arbitration No. 98-00448  
 Award Page 4 of 4

Pursuant to Rule 10332(c) of the Code, the NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously paid to the NASD Regulation, Inc. by the Claimant. Respondent Foster Jeffries Securities Corporation is liable for and shall pay to the NASD Regulation, Inc. the amount of \$1,500 in forum fees.

Respondent Foster Jeffries Securities Corporation is liable for and shall pay to the NASD Regulation, Inc. postponement fees in the amount of \$500 in accordance with Rule 10319 of the Code.

### OTHER COSTS

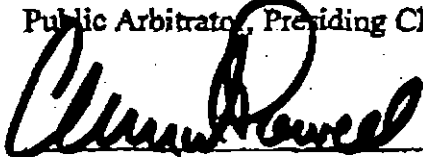
Pursuant to Rule 10333 of the Code, Respondent Foster Jeffries Securities Corporation shall pay to the NASD Regulation, Inc. the \$1,000 member surcharge previously invoiced. Furthermore, Respondent Foster Jeffries Securities Corporation shall pay to the NASD Regulation, Inc. the \$600 pre-hearing processing fees.

Fees are payable to the NASD Regulation, Inc.

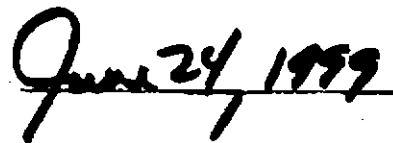
Arbitrators' Signatures:

Dated:

\_\_\_\_\_  
 Dennis S. Boxeur, Esq.  
 Public Arbitrator, Presiding Chair



Cleve W. Powell, Esq.  
 Public Arbitrator, Panelist



\_\_\_\_\_  
 Theron L. Vanlandingham  
 Industry Arbitrator, Panelist

For NASD use only:  
 Date served:

NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 98-00448  
Award Page 4 of 4

Pursuant to Rule 10332(c) of the Code, the NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously paid to the NASD Regulation, Inc. by the Claimant. Respondent Foster Jeffries Securities Corporation is liable for and shall pay to the NASD Regulation, Inc. the amount of \$1,500 in forum fees.

Respondent Foster Jeffries Securities Corporation is liable for and shall pay to the NASD Regulation, Inc. postponement fees in the amount of \$500 in accordance with Rule 10319 of the Code.

#### OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Foster Jeffries Securities Corporation shall pay to the NASD Regulation, Inc. the \$1,000 member surcharge previously invoiced. Furthermore, Respondent Foster Jeffries Securities Corporation shall pay to the NASD Regulation, Inc. the \$600 pre-hearing processing fees.

Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures:

Dated:

Dennis S. Boxeur  
Dennis S. Boxeur, Esq.  
Public Arbitrator, Presiding Chair

June 23, 1999

\_\_\_\_\_  
Cleve W. Powell, Esq.  
Public Arbitrator, Panelist

\_\_\_\_\_  
Theron L. Vanlandingham  
Industry Arbitrator, Panelist

For NASD use only:  
Date served: