

N.A.S.D. REGULATION AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

CASE: 99-00100

The Burkhardt Trust, claimant vs. Capital International Securities Group, respondent.

ATTORNEYS:

For Claimant The Burkhardt Trust ("Claimant"), Brett J. Saddler, Huntington Beach, California.

For Respondent Capital International Securities Group ("Respondent"), David A. Pearl, Esq., Lucio, Mandler, Bronstein, Garbett, Stiphany & Martinez, P.A., Miami, Florida.

DATE FILED: 01/11/1999

CASE SUMMARY: Claimant alleged that on January 29, 1997, Respondent, without authorization purchased 500 shares of Centennial Technologies, Inc., ("CTI"), common stock.

Arbitrator Report: The motion of Respondent, Capital International Securities Group to dismiss the claim of Claimant upon the grounds of res judicata and/or collateral estoppel is granted for the following reasons.

Essentially, what Claimant seeks in this second arbitration is increased damages, over and above what it obtained in the first arbitration brought against Respondent, for the unauthorized purchase and subsequent sale of 500 shares of CTI stock.

Although Claimant attempts to avoid the bar of res judicata by claiming that the present arbitration is based upon new causes of action alleging breach of fiduciary duty, negligence and lack of suitability, the underlying incident or transaction which give rise to these claims, and which is the same in both arbitrations, is the unauthorized purchase of CTI stock by the Respondent. Not only is this transaction the sole transaction disputed in this arbitration, but it was also one of several unauthorized purchases disputed in the first arbitration for which Claimant was awarded damages which were subsequently paid by Respondent.

There is no dispute that the doctrine of res judicata, as well as collateral estoppel, applies to the arbitration proceeding. The law requires parties to place before the arbitrator all matters within the scope of the arbitration, related to the subject matter and relevant to the issues (e.g. the amount of damages ensuing from an unauthorized purchase of stock); and the award is res judicata on matters that were raised or could have been raised.

Moreover, a long established rule prohibits the splitting of a single cause of action so as to permit successive action on parts of the same claim. In other words, all relief arising out of a single transaction or event must be sought and recovered in one action or not at all even though the Claimant is prepared in the second action (1) to present evidence or grounds of legal theories not presented in the first action or (2) to seek remedies or forms of relief not demanded in the first action. Rest 2d Judgments s25.

Arbitrator Report: Accordingly, if a claimant who has recovered an award against a respondent in a certain amount and becomes dissatisfied with his recovery and commences a second action to obtain increased damages, the doctrine of res judicata precludes him from maintaining the second action regardless of whether the claimant withheld the issue from the first action as a result of negligence or by design.

Claim Data

Claim: \$16,605.00
Interest: unspecified
Filing Fees: unspecified

Award Data

Award: \$.00
Interest: \$.00
Filing Fees: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) Claimant's request for interest is hereby denied. 3) The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant, shall be retained by NASD Regulation, Inc.

OTHER FEES: Pursuant to Rule 10333 of the Code, respondent Capital International Securities Group has paid to NASD Regulation, Inc. the \$400.00 Member Surcharge previously invoiced.

OTHER ISSUES: The arbitrator granted Respondent's Motion to Dismiss the Statement of Claim.

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Award 99-00100

AFFIRMATION

I, Herbert M. Schoenberg, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

Herbert M. Schoenberg
Herbert M. Schoenberg, Esq.

January 19, 2000
Date of award