

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Derek J. Likowski, Claimant vs. Mrs. David Pearce "Kim" and NatCity Investments, Inc., Respondents.

Case Number: 99-02618

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimant, Derek J. Likowski, hereinafter referred to as "Claimant", was represented by Carter R. Dodge, Esq., of Cleveland, Ohio.
Respondents, Mrs. David Pearce "Kim" ("Pearse") and NatCity Investments, Inc. ("NatCity"), hereinafter collectively referred to as "Respondents", were represented by Robert N. Rapp, Esq., with Calfee, Halter & Griswold of Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: June 8, 1999

Claimant signed the Uniform Submission Agreement: June 7, 1999

Answer filed by Respondent, Kim Pearse, on or about: July 29, 1999

Respondent, Kim Pearse, signed the Uniform Submission Agreement: July 23, 1999

Respondent, NatCity, was named as a Respondent in an Amended Statement of Claim, and did not sign the Uniform Submission Agreement

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation; negligence; and breach of fiduciary duty. The causes of action relate to transactions in FBT preferred stock.

Unless specifically admitted in her Answer, Respondent, Pearse, denied the allegations made in the Statement of Claim and asserted the following defenses: abuse of process; unclean hands; in pare delecto; and failure to state a cause of action for which relief can be granted.

In its Response to Claimant's Motion to Amend the Statement of Claim, Respondent, NatCity, asserted the following defenses, on its own behalf and on behalf of Respondent, Pearse: that the Claim was stale under applicable state law; and failure to state a cause of action for which relief can be granted.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$27,000
Punitive Damages	\$27,900

Respondent, Pearce, requested that the Claim be dismissed in its entirety, that the Claim be found defamatory and be expunged from her Central Registration Depository record, and that Claimant be ordered to pay unspecified attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant moved to Amend the Statement of Claim, adding NatCity as a Respondent. The Panel declined to rule on the Motion prior to the hearing. Oral argument on the Motion was heard at the hearing on June 8, 2000. The Panel granted the Motion and dismissed the Claims against both respondents with prejudice.

AWARD

After considering the pleadings and the arguments presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Motion to Dismiss is granted and the Claim against Respondents, Mrs. David Pearce "Kim" and NatCity Investments, Inc., is dismissed with prejudice for reason that the Claim was stale when filed under Ohio Revenue Code Sections 2305.09(D) and 1707.43, and NASD Code of Arbitration Procedure Section 10304.

Additionally, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mrs. David Pearce's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent, Mrs. David Pearce "Kim", must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all relief not specifically addressed herein, including punitive [treble] damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$225

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event(s) giving rise to the dispute. In this matter, the member firm is NatCity Investments, Inc.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

NatCity Investments, Inc., though a member firm at the time of the actions giving rise to this dispute, is no longer a member firm of the NASD. Therefore, the above-listed fees have been waived.

Forum Fees and Assessments

The 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 sessions with Panel x \$750		= \$1,500
Pre-hearing conference: January 5, 2000	1 session	
Pre-hearing conference: April 5, 2000	1 session	
Two (2) Hearing sessions x \$750		= \$1,500
Hearing Date: March 20, 2000	1 session	
Hearing Date: June 8, 2000	1 session	
Total Forum Fees		= \$3,000

The Panel has assessed all \$3,000 of the forum fees to Claimant, Derek J. Likowski.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225
Forum Fees	= \$3,000
Total Fees	= \$3,225
Less payments	= \$1,200
Balance Due NASD Regulation, Inc.	= \$2,025

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Marvin J Feldman, Esq.
Public Arbitrator, Presiding Chair


Robert E. Bingham, Esq.
Public Arbitrator

Jay S. Ferrier
Industry Arbitrator

Date of Service (For NASD office use only)

Signature Date

7/18/00
Signature Date

Signature Date

NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC.
RECEIVED
JUL 24 2000

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Marvin J Feldman, Esq.
Public Arbitrator, Presiding Chair

6-30-00

Signature Date

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