

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-02659

and

Names of the Respondents

Hearing Site: Chicago, Illinois

Primex, Advanced Equities, Inc.,
Dwight O. Badger, Lee M. Wiskowski,
Keith G. Daubenspeck, and Eric W. Kim

Nature of dispute: customer v. member and associated persons.

REPRESENTATION OF PARTIES

[REDACTED] ("Claimant"), was represented by Andrew Stoltmann, Esq., of the firm Maddox Koeller Hargett & Caruso, located in Chicago, Illinois.

Respondents Advanced Equities, Inc., ("AEI") Keith G. Daubenspeck, ("Daubenspeck"), Eric W. Kim Inc., ("Kim"), and Dwight O. Badger, ("Badger") or ("Respondents") were represented by Andrew Munro, Esq., of Munro and Zack, LLC, located in Troy, Michigan.

Respondent Lee M., Wiskowski, located in Chicago, Illinois was pro se.

Respondent Primex, represented by Wilfredo Felix, CEO, located in Hempstead, New York was pro se.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about April 11, 2003.

Claimant's Submission Agreement was signed on April 1, 2003.

On June 23, Claimant filed a Response to Primex's Motion to Dismiss.

On August 26, 2004 Claimant filed a Response to the Motion to Dismiss filed by AEI.

The Joint Statement of Answer was filed by Respondents AEI, Daubenspeck, Kim and Badger on or about July 14, 2003.

Respondents AEI, Daubenspeck and Kim did not file Uniform Submission Agreements.

On August 12, 2004 AEI filed a Motion to Dismiss.

Respondent Primex filed a Statement of Answer and Motion to Dismiss on May 30, 2003.

CASE SUMMARY

Claimant alleged as follows: Respondents negligently represented the risks of the investments; Respondents made certain representations that they knew or should have known were false; Respondents violated the Illinois Fraud and Deceptive Trade Practices Act; AEI and Primex are liable to Claimant on the theory of Respondeat Superior; Respondent AEI and Primex are liable for Negligent Supervision.

All of Claimant's causes of action relate to transactions involving Pixelon stock. In addition, Claimant alleges that she was induced to part with an additional \$400,000.00 for an investment opportunity that would generate similar returns to those of Pixelon for a company called Hymarc LTD.

Respondents AEI, Badger, Daubenspeck and Kim denied the allegations set forth in the Statement of Claim.

Respondent Primex denied the allegations set forth in the Statement of Claim. Respondent further stated that [REDACTED] was never a client of, never opened an account, and never conducted business at Primex.

Respondents AEI, Badger, Daubenspeck and Kim requested that the claims filed against them be dismissed in their entirety.

RELIEF REQUESTED

Claimant requested an award in an unspecified amount, though Claimant alleged actual damages in the amount of \$610,000.00. In addition to actual damages, Claimant prayed for attorneys' fees, recovery of margin interest, lost interest, pre and post award statutory rate interest, and punitive damages, all in unspecified amounts.

Respondents AEI, Badger, Daubenspeck, and Kim requested that the claims filed against them be dismissed in their entirety.

Respondent Primex requested that the claims against it be dismissed in their entirety and that it be awarded costs and attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondents AEI, Badger, Daubenspeck, Wiskowski and Kim did not submit properly executed submissions to arbitration with NASD Dispute Resolution, however, pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") they are bound by the determination of the arbitration panel on all issues submitted.

Having found no liability on the part of Primex and based upon Rule 10333, the Panel recommends that all member fees assessed against this Respondent Primex be refunded by NASD.

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 remains on file with the NASD Dispute Resolution (the "NASD").

On August 31, 2004 Claimant voluntarily dismissed her claims against Primex.

The Scope of the hearing of this matter was limited by the Panel to issues relating to Claimant's investments on or about October 22, 1999 in a bridge loan of \$400,000.00 to Hymarc Inc. Claims based upon Claimant's investment in Pixelon, Inc., were stayed pending a ruling by the U.S. District Court for the Western District of Kentucky-Louisville Division on Claimant's motion to be declared a non-class member in a class action settlement (Lawson, et. al. v. Advanced Equities, Inc. et al., No 3:00 CV 382). The Panel did not adjudicate any claims concerning Claimant's investment in Pixelon, Inc., and those claims are hereby dismissed from this proceeding without prejudice.

All Parties were ordered to file Post-hearing Briefs on September 24, 2004. The Panel deliberated on October 4, 2004.

AWARD

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

1. Respondents Advanced Equities, Inc., Keith Daubenspeck and Lee Wiskowki are jointly and severally liable, and shall pay to, Claimant [REDACTED] the sum of \$327,000.00 in compensatory damages;
2. Claimant's claims against Dwight O. Badger, Eric W. Kim and Primex are dismissed 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, not specifically awarded or otherwise provided for above; and,
4. Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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- giving rise to the dispute. Accordingly, Primex and Advanced Equities, Inc., are the Respondent firms and are

Respondent Primex is liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Less Payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Thomas Ward, Esq. - Public Arbitrator, Presiding Chair
John N. Chapin, Jr. Esq. - Public Arbitrator
Jerome Stern - Non-Public Arbitrator

Concurring Arbitrators:

Thomas Ward, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John N. Chapin, Jr. Esq.
Public Arbitrator

Signature Date

Jerome Stern
Non-Public Arbitrator

Signature Date

Date of Service by NASD Dispute Resolution 10-19-04