

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
S. DAVID THORPE, )  
Claimant, )  
vs. ) Case #88-01471  
Award  
F. D. ROBERTS, INC., JOHN OEHL, )  
HERZOG, HEINE GEDULD, INC., and )  
J. MORGAN FINANCIAL SERVICES, )  
Respondents. )  
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Heard before the member of the Arbitration Panel:

Craig Edward Stein, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on May 6, 1988. The hearing was conducted in Fort Lauderdale, Florida on December 18, 1989 with a total of 1 session.

Claimant, S. David Thorpe ("Thorpe"), alleged that Respondents, John Oehl ("Oehl"); J. Morgan Financial Services ("J. Morgan"), a division of F. D. Roberts, Inc.; F. D. Roberts, Inc. ("FDR"); and, Herzog, Heine Geduld, Inc. ("Herzog"), were negligent and breached their fiduciary duties to Claimant in the recommendation, sale and/or handling of Hughes Capitol Corporation stock; that Oehl fraudulently recommended both the purchase and retention of that stock to Claimant; and that Oehl made an unsuitable recommendation in light of Claimant's investment objectives.

Respondent, Oehl, denied all allegations of wrongdoing; crossclaimed against FDR, J. Morgan and Herzog for indemnification; and filed third party claims against Fred Galiardo ("Galiardo"), Sheldon Kanoff ("Kanoff"), Alan Lieb ("Lieb"), John Perfetti ("Perfetti") and Richard Gladstone ("Gladstone") for indemnification.

Herzog filed its Answer and affirmative defenses denying all allegations of wrongdoing; counterclaimed against Claimant for malicious prosecution; and cross-claimed against FDR for indemnification.

Galiardo requested dismissal of Oehl's Third Party Claims against him and failed to file Submission Agreement.

Kanoff denied all allegations of wrongdoing.

Perfetti denied that a claim was stated against him.

Lieb denied any wrongdoing.

As reflected below, FDR was removed as a party due to bankruptcy. Herzog was dismissed by Claimant and, in turn, Herzog dismissed all Crossclaims against FDR; and, Claimant dismissed, with prejudice, his claim against J. Morgan.

## RELIEF REQUESTED

Claimant requested damages in the amount of \$7,250.00 plus interest, and other costs. Respondents requested dismissal of the claim and indemnification from co-Respondents and Third Party Respondents.

## AWARD

On December 18, 1989, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 3, 1988, and by Respondents Oehl on January 12, 1989; Herzog on June 24, 1988; and, Lieb on June 9, 1989. All other Respondents failed to file Submission Agreements required by Section 12 of the Code. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant has 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 in file with the NASD, Inc.
2. Respondent, Oehl, is hereby liable and shall pay to Claimant the amount of Seven Thousand Two Hundred Fifty and 00/100 (\$7,250.00) Dollars, plus interest at the legal rate of 12% per annum from February 14, 1987 to the date of this Award in the amount of Two Thousand Five Hundred One and 25/100 (\$2,501.25) Dollars for a total due the Claimant of Nine Thousand Seven Hundred Fifty One and 25/100 (\$9,751.25) Dollars.
3. Cross Respondents, Herzog and J. Morgan, are hereby not liable to Respondent/Cross Claimant, Oehl, and therefore, Oehl's claims against them are dismissed for lack of evidence in the record and failure to adequately plead a factual or legal basis for the claims.
4. Third Party Respondents, Galiardo, Kanoff, Lieb, Perfetti and Gladstone, are hereby not liable to Respondent/Third Party Claimant, Oehl, and therefore, Oehl's claims against them are dismissed for lack of evidence in the record and failure to adequately plead a factual or legal basis for the claims.
5. Pursuant to the stipulation of dismissal of Herzog by the Claimant, Claimant's claims against Herzog are hereby dismissed.
6. Pursuant to the Notice of Voluntary Dismissal with Prejudice, of J. Morgan by the Claimant, Claimant's claims against J. Morgan are hereby dismissed.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, Oehl, is hereby assessed forum fees in the amount of Two Hundred and 00/100 (\$200.00) Dollars (one session x \$200.00), of which Oehl shall pay Twenty Five and 00/100 (\$25.00) Dollars to Claimant and One Hundred Seventy Five and 00/100 (\$175.00) Dollars to the National Association of Securities Dealers. The NASD shall retain the Twenty Five and 00/100 (\$25.00) Dollars previously deposited by Claimant for such forum fees.

8. The parties shall each bear all other costs and expenses incurred by them in this matter.

#### OTHER ISSUES

Pursuant to the Notice and Order of Stay in the Matter of F.D. Roberts Securities, Inc., Case No. 89-01657, F. D. Roberts was removed as a party to this proceeding. Based upon the record, the Arbitrator determined that adequate service of pleadings and notice to all parties to this proceeding was effected by the NASD, Inc.

#### ARBITRATOR CONCURRING

Craig Edward Stein, Esq.

Dated this 18th day of December, 1989.