

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

DAN W. AND JUDITH I. GUDE

Claimant(s)

and

BLINDER ROBINSON & CO., INC.  
PHYLLIS DUCHEIN

Respondent(s)

Case No. 89-00843

CASE SUMMARY

In a statement of claim filed with the NASD on or about March 20, 1989, Claimants Dan and Judith Gude ("the Gudes") alleged that the Respondents Blinder Robinson & Co., Inc. ("Blinder Robinson") and Phyllis Duchein ("Duchein") incorrectly categorized trades in the Gudes' account as unsolicited when Duchein "initiated every single one", sold the Gudes new issues in the State of Missouri which was "against SEC regulations in the State of Missouri", "misquoted stocks in their portfolio" in violation of SEC regulations, engaged in unethical business practices and violated the Rules of Fair Practice, manipulated stock prices and engaged in fraud. The allegations were made concerning the purchase of over the counter stocks.

In their joint statement of answer filed with the NASD on or about July 12, 1989, Blinder Robinson and Duchein alleged that most of the claims were without specific factual allegation and consisted of conclusory statements. Blinder Robinson and Duchein admitted that a degree of active trading was reflected in the Gudes account in keeping with the Gudes' investment objectives. Blinder Robinson and Duchein denied that such activity was the result of her "constant harassment and ineptitude" or the result of "her having Claimants constantly selling this and buying that only to offset the loss of the other". Duchein also denied that she misquoted stock prices to the Gudes. Blinder Robinson and Duchein also denied that all trades in the Gudes' accounts were solicited. Blinder Robinson and Duchein denied that a false demand was created to manipulate prices on new issues stock or that any representations were made by Duchein to the Gudes regarding the number of shares that could be purchased or how much could be made on new issue stock such as American Strategic Metals, Inc and San Juan Fiber Glass Pools, Inc. Blinder Robinson and Duchein also denied that they engaged in any unethical business practice or violated SEC regulations regarding Blue Sky laws. It was further denied that any impairment to the health and finances of the Gudes was caused by actions of Blinder Robinson and Duchein. Blinder Robinson and Duchein also asserted certain affirmative defenses to the allegations in the claim including, but not limited to, the doctrines of estoppel, waiver, laches and ratification.

### RELIEF REQUESTED

The Gudes requested losses incurred in the amount of \$77,767.00. Blinder Robinson and Duchein requested dismissal of the claims in their entirety.

### PROCEDURAL SUMMARY

At the conclusion of the hearing on May 24, 1990, the arbitrators agreed to include in the award rendered in the case the following stipulation between the parties. Upon the stipulation of the parties, the panel finds that Claimant has filed a lawsuit in the Circuit Court of the County of St. Louis, State of Missouri, alleging that the stocks of companies identified as Namtie Electronics, Inc. and SBB, Inc. were sold to Claimants in violation of Missouri Securities Laws regulating the requirements of registration of such securities in the State of Missouri prior to their sale.

### AWARD

On May 22, 23, and 24, 1990, in St. Louis, Missouri during a hearing lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 13, 1989 by Claimant Dan W. Gude, on April 8, 1989 by Claimant Judith I. Gude, on July 11, 1989 by M. Dean Arkema, Treasurer on behalf of Respondent Blinder Robinson, and on July 7, 1989 by Respondent Phyllis Duchein.

The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the parties post-hearing submissions, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claims asserted by the Gudes against Blinder Robinson and Duchein shall be and are hereby denied in their entirety;
2. The parties shall each bear their respective costs, expenses and attorneys' fees incurred in this matter;
3. Pursuant to Section 30(b) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$100.00 postponement fee previously deposited by the Gudes to obtain a postponement of a previously scheduled hearing date in this matter; and

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited with the NASD by the Claimants as forum fees for a pre-hearing conference with the arbitrators. Additional forum fees of \$1500 are assessed and shall be paid to the NASD by the Gudes. Blinder Robinson is also assessed and shall pay to the NASD \$1500 in additional forum fees.

By the Panel

Dated: July 23, 1990

/S/ Robert M. Livingstone  
Presiding Chair

Dated: July 27, 1990

/S/ David P. Oetting

Dated: July 30, 1990

/S/ Jan M. Jensen

Date Served: August 1, 1990