

③ N.A.S.D. AWARD  
NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Michael Kleitz )

Case No. 90-00365

Name of Respondent(s) )

Huberman Securities Corp. )

Michael Huberman )

Heard before the members of the Arbitration Panel:

Henry Sanchez, Jr., Esq.

Public

Arthur De Stefano

Industry

James B. Williams

Public

REPRESENTATION

Claimant, Michael Kleitz ("Kleitz"), was represented by Timothy W. Ross, Esq. of Timothy W. Ross, P.A.

Respondent, Huberman Securities Corp. ("HSC") and Michael Huberman ("Huberman"), were represented by Michael Huberman, Pro-Se.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") February 2, 1990. Claimant alleged that Respondents were liable for: violations of the Securities Exchange Act of 1934 and Rule 10b-5; violations of the Florida Securities and Investor Protection Act; violation of Chapter 517 of the Florida Statutes; common law fraud; negligent misrepresentation; breach of fiduciary duty and negligent supervision.

Claimant alleged that: shortly after placing a short sell order for certain stock with his broker, he called his broker back and cancelled the transaction; Claimant's broker confirmed that the transaction was cancelled; that thereafter Claimant was informed that the cancellation was too late; and HSC covered the short sale by purchasing the stock and selling other stock from Claimant's account to cover the loss.

In a Statement of Answer filed with the NASD on May 21, 1990, Respondents denied all allegations of wrongdoing and alleged that Claimant was a sophisticated investor.

Respondents alleged the affirmative defenses of failure to state a cause of action; failure to join an indispensable party; Claimant had no right to rely on Respondents; assumption of risk; estoppel; waiver; contributory negligence; and, sale of Claimant's stock was proper and in accordance with prevailing market prices.

#### RELIEF REQUESTED

Claimant requested unspecified damages, plus interest, costs, attorney's fees, and punitive damages.

Respondents requested dismissal of the claim plus costs.

#### AWARD

On June 10, 1991, in Tampa, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on November 14, 1989, and signed on May 15, 1990, by Michael Huberman individually and on behalf of Respondent, Huberman Securities Corp.

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

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondent, HSC, is found not liable and, therefore, all claims against it are hereby dismissed.
3. Claimant's requests for interest, attorney's fees, costs, expenses and punitive damages are denied.
4. Respondents' request for costs and expenses is denied.

### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,000.00 (2 sessions x \$500.00 per session). Claimant is hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

### OTHER ISSUES

1. At the hearing on June 10, 1991, Claimant dismissed, with prejudice the claims against Respondent, Huberman, individually.

Concurring Arbitrators's Signatures

  
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Henry Sanchez, Jr., Esq.

  
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Arthur De Stefano

  
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James B. Williams

Date of Decision: July 2, 1991