

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

James A. DeChaine

Claimant

and

90-00999

Craig-Hallum, Inc.

David Pritchard

Respondents

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REPRESENTATION OF PARTIES

Claimant James A. DeChaine was represented by Thomas J. Conlin, Esq. and Jan M. Conlin, Esq. of Robins, Kaplan, Miller & Ciresi, Minneapolis, Minnesota.

Respondents Craig Hallum, Inc. and David Pritchard were represented by Terrence J. Fleming, Esq. of Lindquist and Vennum, Minneapolis, Minnesota.

CASE SUMMARY

In A Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 5, 1990, Claimant James A. DeChaine ("DeChaine") alleged that Respondents Craig-Hallum, Inc. ("Craig-Hallum") and David Pritchard ("Pritchard") wrongfully liquidated DeChaine's margin account containing 10,000 shares of Go-Video stock to meet a margin call. As alleged, Respondents liquidated the account on December 12, 1989, the same day Craig-Hallum sent to DeChaine a written margin notice specifically giving him until December 18, 1989 to meet margin, even though the account did not fall below the 30% equity requirement provided by Craig-Hallum in-house rules and Pritchard had been informed by DeChaine that funds to meet the margin call were being sent by overnight mail. De Chaine asserted three counts based on breach of contract, negligence and breach of fiduciary duty.

In a Statement of Answer and Counterclaim filed with the NASD on May 21, 1990, Respondents Craig-Hallum, Inc. and David Pritchard denied the material allegations of the Statement of Claim, alleging that 1) DeChaine had promised to deliver funds on December 12, 1987 to meet the margin call, but failed to do so, and the funds did not arrive until December 14, 1989 after the account was already liquidated; 2) the sale was reasonable under the circumstances and was expressly authorized by DeChaine in his margin agreement; 3) DeChaine's equity was below NASD and Craig-Hallum margin maintenance requirements when the account was liquidated; and 4) DeChaine was over concentrated in a single stock with an extremely volatile market price.

Furthermore, Respondents alleged as legal defenses the following:

1) DeChaine authorized, ratified and willingly assumed the risk of all transactions; 2) any damages suffered were caused by DeChaine's conduct or the conduct of others for whom Respondents have no responsibility; 3) the transactions complained of were properly conducted in accordance with all applicable rules and regulations; and 4) generally, under Minnesota law, a broker owes no fiduciary duty to a customer and pre-arbitration interest is not recoverable. Respondents asserted a counter-claim pursuant to Minnesota Statute Par. 549.21 alleging that DeChaine's claim was frivolous and brought in bad-faith.

In an Answer to Respondents Counterclaim filed with the NASD on May 31, 1990, Claimant denied the allegations of the Counterclaim.

#### RELIEF REQUESTED

Claimant James A. DeChaine requested entry of an award against Respondents Craig-Hallum, Inc. and David Pritchard in an amount in excess of \$29,000 plus interest, or in the alternative, an amount proved at hearing; reasonable attorney's fees and costs; and dismissing Respondents's Counterclaim.

Respondents Craig-Hallum, Inc. and David Pritchard requested that the Statement of Claim be dismissed and denied in its entirety and for attorneys' fees and costs incurred in defending this arbitration pursuant to Minnesota Stat. Par. 549.21 as alleged in the counterclaim.

#### PROCEDURAL MATTERS

On June 3, 1991 in Minneapolis, Minnesota during a hearing lasting a total of two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on February 23, 1990 by Claimant James A. DeChaine, on May 16, 1990 by Gary G. Westerland on behalf of Respondent Craig-Hallum, Inc., and on May 18, 1990 by Respondent David Pritchard.

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 original remains on file with the NASD.

#### AWARD

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

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The Counterclaim is hereby dismissed and denied in its entirety;
3. The parties shall bear their own costs, including attorneys'

fees, except for those specifically enumerated herein;

4. Pursuant to Section 43c of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 claim filing fee and the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant James A. DeChaine. In addition, Claimant James A. DeChaine is liable for and shall pay to the NASD additional forum fees in the sum of \$500.00.

Dated:

July 16, 1991

Cassandra Mihalchick, Esq.  
Cassandra Mihalchick, Esq.  
Presiding Chair  
Public Arbitrator

Date Served: 7-22-91