

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Walter A. and Marie T. Ungehajer

v

90-01453

Drake Capital Securities  
Charles Monica

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REPRESENTATION

For Claimant: James C. Krause, Esq. - Renicha & Krause

For Respondent: Drake Capital Securities - Michael D. Donahue - Shaub,  
Williams, Regan & Wells

For Respondent: Charles Monica - In Pro Se

CASE INFORMATION

Statement of Claim file: May 22, 1990

Claimants' Submission Agreement signed on: October 12, 1989

Statement of Answer filed by Respondent, Drake Capital Securities on: May  
16, 1991

Statement of Answer filed by Respondent, Charles Monica on: September 19,  
1991

Respondent, Drake Capital Securities Inc.'s Submission Agreement signed on:  
May 19, 1991

Respondent, Charles Monica's Submission Agreement signed on: September 7,  
1991

HEARING INFORMATION

Pre-Hearing Conferences: February 12, 1992 (one session)  
February 14, 1992 (one session)  
February 20, 1992 (one session)  
March 4, 1992 (one session)

Hearing Dates/Sessions: April 15, 1992 - Two Sessions  
April 16, 1992 - Three Sessions

Hearing Location: San Diego, California

#### CASE SUMMARY

Claimants, Walter A. and Marie T. Ungehafer, (Ungehafer) claim against Drake Capital Securities, Inc. and Charles Monica for breach of fiduciary duty, breach of contract, unsuitable trading, fraud, negligence and violation of the Racketeering and Corrupt Organizations Act.

Respondent, Drake Capital Securities, Inc. (Drake) denied each and every allegation in the claim and alleged affirmative defenses.

Respondent, Charles Monica (Monica), Ungehafer was fully aware of the risks involved in trading the OTC market and that he knowingly accepted them. Monica also denied each and every allegation of the claim.

#### RELIEF REQUESTED

Claimants requested: Recovery of the full amount of their damages according to proof, rescission damages, interest, treble damages under RICO, punitive damages and costs.

Respondents requested: Dismissal of the claim in its entirety.

#### OTHER ISSUES CONSIDERED AND DECIDED

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(s) remain on file with the NASD.

#### AWARD

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

1. Each and every claim of Claimants, Walter A. and Marie T. Ungehafer, against Respondent, Drake Capital Securities, Inc., is dismissed.
2. Each and every claim of Claimants, Walter A. and Marie T. Ungehafer, against Respondent, Charles Monica, is dismissed.
3. The parties shall each bear their respective costs and fees.

#### OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Forum fees Assessed Against: Claimants, Walter A. and Marie T. Ungehajer, are assessed the sum of \$1,250.00 in Forum Fees, representing one-half of the assessment for 5 regular hearing session at \$400.00 each plus 3 pre-hearing conferences at \$300.00 plus \$400.00 for a pre-hearing with a full panel participating, less the previously deposited hearing session deposit of \$400.00.

Forum Fees Assessed Against: Respondent, Drake Capital Securities, Inc., is assessed the sum of \$1,650.00, representing one-half of the assessment as indicated above.

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

ARBITRATION PANEL

Name

Public/Industry

William R. Newsome

Public Arbitrator

James H. Bowersox

Public Arbitrator

Lewis C. Brown

Industry Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
William R. Newsome

DATE SERVED: 06/11/92

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James H. Bowersox

*Lewis C. Brown*

\_\_\_\_\_  
Lewis C. Brown

Date of Decision: \_\_\_\_\_