

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Bruce Carradine

vs.

NASD Arbitration  
No. 91-00099

Bateman Eichler, Hill Richards, Inc. and  
William J. Jones

REPRESENTATION

For Claimant: David Greenberg, Esq.

For Respondents: James Burns, Esq. and Karen Johnson-McKewan, Esq. of  
Brobeck, Phleger and Harrison

CASE INFORMATION

Statement of Claim filed: January 8, 1991

Revised Statement of Claim filed: January 25, 1991

Claimant's Submission Agreement signed on: November 27, 1990

Response to Revised Statement of Claim filed by Respondents on: March 27,  
1991

Respondent Bateman Eichler, Hill Richards, Inc.'s Submission Agreement  
signed on: March 26, 1991

Respondent William Joseph Jones' Submission Agreement signed on: March 19,  
1991

HEARING INFORMATION

Pre-Hearing Conference(s) : November 21 and 25, 1991 / 2 sessions

Hearing Date(s)/Session(s): December 17, 18, 19, 20, 1991 / 8 sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged violations of the Securities Exchange Act section 10(b); liability under section 12(2) of the Securities Act of 1933; violation of the California Corporate Securities Law of 1968; fraud; negligent misrepresentation; negligence; and breach of fiduciary duty. Said allegations were made in connection with stock purchases including Gracoo Systems, Inc..

Respondents denied each and every allegation of the claim. They alleged that Claimant is an intelligent man who gambled with his money and lost, that he knew what he was doing, understood the risks he was taking and was willing to go forward with the investment program he himself designed. Respondents alleged as affirmative defenses that the claim should be dismissed because it fails to state a claim on which relief may be granted; Carradine stands before the panel with unclean hands; Claimant is estopped from cancelling or seeking damages on any of the transactions in issue; Claimant authorized or ratified each of the transactions in issue; and Claimant assumed the risk of his stock trading and failed to mitigate his damages.

#### RELIEF REQUESTED

Claimant requested 1) compensatory damages in the amount of \$336,000; 2) punitive damages in an amount to be determined by the panel; 3) attorneys' fees and costs incurred in the arbitration; and 4) such other and further relief as the panel deems appropriate.

Respondents requested that Carradine take nothing by reason of his claim, and that Respondents be granted judgment on Claimant's claim. Respondents also requested an award of their costs of suit and attorney's fees and such other and further relief as the arbitrators deem appropriate.

#### 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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Based on a finding of failure to supervise, Respondent Bateman Eichler, Hill Richards, Inc. is liable for and shall pay to Claimant the sum of Forty Four Thousand Eight Hundred Seventy Five Dollars (\$44,875), plus interest at the rate of 9% per annum from February 1, 1990 until paid.
2. Each and every claim against Respondent William Jones is dismissed.
3. Claimant's request for punitive damages is denied.
4. Respondent Bateman Eichler, Hill Richards, Inc. is liable for reimbursing Claimant his out-of-pocket costs of Four Thousand Six Hundred Five Dollars (\$4,605).
5. Claimant's request for attorneys' fees is denied.
6. Each party shall bear its own attorneys' fees.

REMARKS

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200 nonrefundable filing fee and the \$750 hearing session deposit previously paid by the Claimant. Respondent Bateman Eichler, Hill Richards, Inc. is liable for reimbursing Claimant said \$950. Further, Respondent Bateman Eichler, Hill Richards, Inc. is assessed forum fees in the amount of Five Thousand One Hundred Dollars (\$5,850). Forum fees were calculated as follows: 2 prehearing conferences x \$300 plus 8 hearing sessions x \$750 = \$6600 minus the \$750 hearing session deposit previously paid by Claimant = \$5850 total due.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Joanna Leighton  
Joanna Leighton, Esq.

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Date of Decision: 1-17-92

Served 1/28/1992