

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

Sherwood H. Brieloff

vs.

Case #: 91-01315

Name of Respondent

Herzog Heine Geduld, Inc. and Abe Bramnik

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**REPRESENTATION**

For Claimant: Steven Wilk, Esq., New York, New York.

For Respondent: Herzog, Heine Geduld, Inc.: William A. Jacobson, Esq. of Miller & Wrubel, PC, Providence, Rhode Island.

For Respondent Abe Bramnik: Robert Bramnik, Esq. of Althemer & Gray, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on: April 24, 1991.

Claimant's Submission Agreement was signed on: April 19, 1991.

Amended Statement of Claim filed on: October 2, 1991.

Statement of Answer filed by Respondent, Herzog Heine Geduld on: June 10, 1991.

Respondent Herzog Heine Geduld's Submission Agreement signed on: June 10, 1991.

Statement of Answer filed by Respondent Abe Bramnik on: August 28, 1992.

Respondent Abe Bramnik's Submission Agreement signed on: March 10, 1993.

Statement of Answer to Amended Claim filed by Respondent Herzog Heine Geduld on: October 21, 1992.

**HEARING INFORMATION**

Pre-hearing Session:	December 3, 1992	-	1 session
Hearing Dates/Sessions:	March 10, 1993	-	2 sessions
	March 11, 1993	-	2 sessions
	May 11, 1993	-	2 sessions
	May 12, 1993	-	2 sessions
	May 19, 1993	-	2 sessions
	September 13, 1993	-	2 sessions
	September 14, 1993	-	2 sessions
	October 26, 1993	-	2 sessions
	October 27, 1993	-	2 sessions

Hearing Location: NASD offices located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that on April 15, 1987 he invested \$56,250.00 by buying 15,000 units of Axiom Systems, Inc. and on June 15, 1987 he sold 5,000 units of this holding, thus reducing his investment to \$33,500.00. Then on July 29, 1988 he invested \$60,000.00 in convertible debentures of Axiom Systems. Claimant further alleged that these transactions were made through B-R Securities Co., which has been acquired by Respondent Herzog Heine Geduld. Claimant contended that he had no knowledge nor never heard of Axiom and he relied upon Respondent Abe Bramnik and Mark Goldman, representatives of Respondent Herzog Heine Geduld for all information and "expert" opinions. Claimant alleged that the Axiom investment was presented as being truly superior and he was told he could "simply sit back, collect [his] 10% interest and watch the stock increase in value." Claimant alleged that at no time was he given any word of warning or caution by an agent or associate of Respondent Herzog regarding the very substantial risk of default in payment of the interest on the securities or of failure of the company. Claimant further alleged that Respondent Bramnik acting on behalf of B-R Securities Co., made statements to Claimant concerning Axiom that were false and misleading which caused Claimant to lose money in his account.

Respondent Herzog Heine Geduld ("Herzog") maintained that Claimant purchased 15,000 units of Axiom Systems on April 15, 1987 through B-R Securities Corp. a now defunct broker-dealer and distinct from Bond Richmond Co. Inc. who was a member of the underwriting group. Respondent Herzog further maintained that in connection with that purchase, Claimant received a prospectus for Axiom Units which had on the cover page in bold, prominent type warnings that the securities were high risk. Respondent Herzog further maintained that the Statement of Claim failed to set forth any factual or legal basis for a claim against Respondent Herzog and the claim is barred by statute of limitation.

Respondent Brieloff maintained that the statute of limitations preclude this claim and Respondent Brieloff did not mislead Claimant. Respondent Brieloff further maintained that the claim is subject to dismissal under waiver and ratification.

#### **RELIEF REQUESTED**

Claimant requested:       \$60,000.00 against Respondent Bramnik.  
                                  \$60,000.00 against Respondent Herzog, and  
                                  \$93,800.00 against both Respondents

Respondent requested: All claims be dismissed and costs.

#### **AWARD**

1.     On September 20, 1993 the panel granted Respondent Herzog Heine Geduld's Motion to Dismiss, thereby, dismissing all claims against Respondent Herzog.
2.     All claims against Respondent Bramnik be and hereby are dismissed in their entirety.
3.     Claimant Sherwood Brieloff be and hereby is liable and shall pay Respondent Bramnik \$2,000.00 to represent Respondent Bramnik's costs, fees, expenses and attorneys fees.

#### **FORUM FEES**

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

18 sessions x \$750.00 + 1 session (pre-hearing) x 300.00 less \$700.00 hearing session deposit = \$13,800 net due.

Claimant Sherwood Brieloff be and hereby is liable and shall pay the NASD the sum of \$13,800.00 to represent forum fees.

The NASD shall retain the \$200.00 hearing session deposit and \$700.00 hearing session deposit.

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

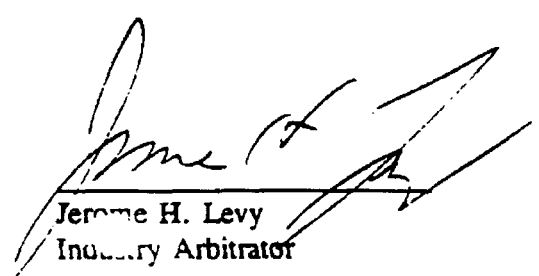
**ARBITRATORS' SIGNATURE**

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Joseph J. Arata, Esq.  
Public Arbitrator

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Barry Feiden  
Public Arbitrator



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Jerome H. Levy  
Industry Arbitrator

NASD Date of Decision: January 10, 1994

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared Joseph J. Arata, Esq. know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared Barry Feiden known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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STATE OF: *NY*

SS:

COUNTY OF: *NY*

On this *24* day of *June*, 1993, before me personally appeared Jerome H. Levy known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

MARTIN J. KING  
Notary Public, State of New York  
No. 41-40904-6  
Qualified in Queens County  
Certified in New York County  
Commission Expires *12-31-95*

*Martin J. King Notary Public*

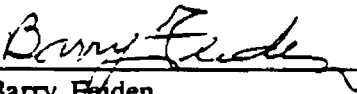
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ARBITRATORS' SIGNATURE

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Joseph J. Arata, Esq.  
Public Arbitrator



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Barry Fiden  
Public Arbitrator

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Jerome H. Levy  
Industry Arbitrator

NASD Date of Decision: January 10, 1994

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared Joseph J. Arata, Esq.  
known and known to me to be the individual described in and who executed the foregoing  
instrument and be duly acknowledged to me that he executed the same.

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STATE OF: *NEW YORK*

COUNTY OF: *WESTCHESTER* SS:

On this *21<sup>ST</sup>* day of *December*, 1993, before me personally appeared Barry Feiden known and  
known to me to be the individual described in and who executed the foregoing instrument and  
be duly acknowledged to me that he executed the same.

*WILLIAM G. BRUNO*  
NOTARY PUBLIC, STATE OF NEW YORK  
J. J. BRUNO  
WESTCHESTER COUNTY  
COMMISSION EXPIRES *7/1/99*

*[Signature]*

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STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared Jerome H. Levy known  
and known to me to be the individual described in and who executed the foregoing instrument  
and be duly acknowledged to me that he executed the same.

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ARBITRATORS' SIGNATURE

A handwritten signature in cursive script, appearing to read "J. Arata", written over a horizontal line.

Joseph J. Arata, Esq.  
Public Arbitrator

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Barry Feiden  
Public Arbitrator

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Jerome H. Levy  
Industry Arbitrator

NASD Date of Decision: January 10, 1994



STATE OF: *NEW YORK*

COUNTY OF: *NEW YORK*

SS:

On this *3* day of *JAN.*, 199*4*, before me personally appeared Joseph J. Arata, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



ALFRED SCHMIDT  
Notary Public, State of New York  
No. 41-8821803  
Qualified in Queens County  
Commission Expires June 30, 19*94*

STATE OF:

SS:

COUNTY OF:

On this     day of     , 1993, before me personally appeared Barry Feiden known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this     day of     , 1993, before me personally appeared Jerome H. Levy known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.