

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Toluca Pacific Securities Corporation

NASD Arbitration  
No. 91-03129

Name of Respondents

Mark Shmorak  
Nava Shmorak  
Dr. Frank Tacas

CONSOLIDATED WITH

Name of Claimants

Hal B. Phillips  
Douglas J. Phillips  
Phillips Management Services

NASD Arbitration  
No. 91-03203

Name of Respondents

Toluca Pacific Securities Corporation  
Peter Blowitz

REPRESENTATION

For Toluca Pacific Securities Corp. and Peter Blowitz:  
Sheldon M. Jaffe, Esq. - Los Angeles, California

For Hal B. Phillips, Douglas J. Phillips and Phillips Management Services:  
Irving M. Einhorn, Esq. - Los Angeles, California

For Mark Shmorak, Nava Shmorak and Dr. Frank Takacs:  
Paul H. Samuels, Esq. - Santa Monica, California

CASE INFORMATION

Statement of Claim filed by Toluca Pacific Securities Corp. on October 7, 1991

Claimant Submission Agreement signed on October 17, 1991

Statement of Answer filed by Respondents, Hal B. Phillips, Douglas J. Phillips, Phillips Management Services, Mark and Nava Shmorak and Dr. Frank Takacs on November 4, 1991

Statement of Claim filed by Hal B. Phillips, Douglas J. Phillips and Phillips Management Services on October 15, 1991

Statement of Answer filed by Respondents Toluca Pacific Securities Corp. and Peter Blowitz on November 12, 1991

Submission Agreement signed by Toluca Pacific Securities Corp. on October 17, 1991

Submission Agreements signed by Hal B. Phillips and Douglas J. Phillips on October 11, 1991

Submission Agreement signed by Phillips Management Services on November 7, 1991

Submission Agreement signed by Peter Blowitz on January 29, 1992

Submission Agreement signed by Frank Takacs on February 8, 1992

Submission Agreement signed by Mark and Nara Smorak on December 4, 1991

#### HEARING INFORMATION

Hearing Dates/Sessions:	October 19, 1992	-	One Session
	November 19, 1992	-	Two Sessions
	November 20, 1992	-	Two Sessions
	<u>December 3, 1992</u>	-	<u>Two Sessions</u>
	Total Sessions		Seven Sessions

Hearing Location: Los Angeles, California

#### CASE SUMMARY

Claimant, Toluca Pacific Securities Corp. (Toluca), initially filed its claim against Respondents, Dr. Frank Takacs, Mark Smorak, Nara Smorak, Phillips Management Services, Hal P. Phillips, and Douglas J. Phillips, (Respondents) in Superior Court, County of Los Angeles. Subsequently, the claim was removed from Court and filed with the NASD. Said claim alleged that the named Respondents breached their contract with Toluca by not paying for purchases of stock in E. N. Phillips Company. Said non-payment lead to a loss to Toluca in the amount of \$259,250.00.

Respondents, answering jointly, alleged fraud in the inducement to execute the contract, execution of contract under undue influence, mistake of fact sufficient to permit Respondents to avoid the contract, voidability of the contract because its purpose was contrary to public policy and voidability due contravention of express provisions of law.

#### RELIEF REQUESTED

Claimant requested recovery of contractual losses in the amounts of \$103,628.69 as to Respondent Takacs and \$102,699.75 as to Respondents, Shmorak, attorneys' fees, legal expenses and costs.

Respondents requested return of \$75,000.00 given to Toluca with interest thereon and restoration in their account of 248,000 shares of E. N. Phillips liquidated by Toluca from said accounts.

#### OTHER ISSUES CONSIDERED & 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 originals 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. Respondent, Dr. Frank Takacs, is liable and shall pay to Claimant, Toluca Pacific Securities Corporation, the sum of One Hundred Three Thousand Five Hundred Ninety Eight Dollars and Sixty-Nine Cents (\$103,598.69).
2. All other claims made by the parties in Claim Number 91-03129 and Claim Number 91-03203 are denied.
3. The parties shall each bear their respective costs and fees, including attorneys' fees.
4. The NASD shall retain all filing fees and hearing session deposits made by the parties.

#### FORUM FEES

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

Toluca Pacific Securities Corporation is assessed and shall pay to the NASD the sum of \$6,000.00 in forum fees representing six sessions at \$1,000.00 each.

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

ARBITRATORS

Name

George M. Wiener

Public/Industry

Public Chairperson

Public Panelist

Industry Panelist

Concurring Arbitrators' Signatures

George M. Wiener

\_\_\_\_\_

\_\_\_\_\_

Date of Decision: Dec. 28, 1992

Served 1/13/1993