

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

M.K. Saperstein DMD TTEE FBO M.K. Saperstein DMD
Defined Benefit Plan dated 9/30/83; Mark Saperstein
CUSTODIAN FBO Abby Saperstein UIMA/AZ, and
Mark Saperstein, individually.

91-03209

Name of Respondents

US Securities Clearing Corp.
Mark Malenfant
Larry Hugh Malenfant
Biltmore Equities & Securities Ltd.

REPRESENTATION

Claimant, Mark Saperstein, individually, appeared pro se and as representative on behalf of the Saperstein DMD Defined Benefit Plan and Abby Saperstein.

Respondent, U. S. Securities Clearing Corporation was represented by A. James Miranti, President.

Respondent, Larry Hugh Malenfant appeared pro se.

Respondent Biltmore Equities & Securities, Ltd. was represented by Larry Hugh Malenfant.

Respondent, Mark Malenfant failed to appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed with the NASD on October 15, 1991.

Claimant's Submission Agreement was signed on September 22, 1991 by Mark K. Saperstein, trustee on behalf of the DMD Defined Benefit Plan and on September 22, 1991 by Abby Saperstein and Mark K. Saperstein in their individual capacities.

The Statement of Answer was filed with the NASD on February 14, 1992 by Respondent, U. S. Securities Clearing Corporation.

Respondent, U. S. Securities Clearing Corporation did not execute a Submission Agreement.

Respondent, U. S. Securities Clearing Corporation filed a crossclaim with the NASD on February 14, 1992 against Respondents, Mark Malenfant, Larry Hugh Malenfant and Biltmore Equities & Securities, Ltd.

Respondents, Mark Malenfant, Larry Hugh Malenfant and Biltmore Equities & Securities, Ltd did not file either an answer to the claim or Submission Agreements with the NASD.

HEARING INFORMATION

The hearing took place on May 18, 1992 and lasted one (1) hearing session.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimant, Mark K. Saperstein ("Saperstein") alleged that on May 20, 1991 through Respondent, Mark Malenfant ("M. Malenfant") he placed an order to sell his holdings in The Movie Superstores, Inc. common stock listed on NASDAQ. At the same time Saperstein allegedly requested that M. Malenfant purchase EPTIOPR common stock which was listed on the American Stock Exchange. Saperstein alleged that he received both telephonic and written confirmation of the trades. Thereafter, Saperstein alleged that he received unsolicited notices of cancellation of the trades. Saperstein asserted that M. Malenfant advised him that the cancellation was in error and that he was assured by phone on August 26, 1991 by M. Malenfant that the error in his accounts had been rectified. Saperstein alleged that despite these assurances the error had not been rectified.

Respondent, U. S. Securities Clearing Corporation ("U.S. Securities") denied the allegations of the statement of claim and asserted that it was not responsible for the wrongful acts of M. Malenfant. U. S. Securities asserted various affirmative defenses including but not limited to the failure to allege sufficient facts leading to US Securities.

U. S. Securities filed a crossclaim for indemnity against Respondents, M. Malenfant, Larry Hugh Malenfant ("L. Malenfant") and Biltmore Equities & Securities, Ltd. ("Biltmore").

M. Malenfant, L. Malenfant and Biltmore all failed to answer the claim and failed to answer the crossclaim.

RELIEF REQUESTED

Superstein requested the proceeds from the ordered sale of 137,225 shares of The Movie Superstores, Inc. common stock on 5/20/91 at \$0.43 per share or \$59,006.75 or the equivalent amount of EPTIOPF common stock at the price of 15 1/4 -15 1/8 or 3,697 shares, whichever is greater.

U. S. Securities requested dismissal of the claim, an award of attorney's fees and costs and indemnity from the other Respondents in the event an award was issued in Claimant's favor.

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.

M. Malenfant did not appear at the hearing on May 18, 1992. M. Malenfant's father, L. Malenfant, represented that it was his understanding that M. Malenfant was to appear at the hearing. The arbitration panel determined that M. Malenfant was served with the Statement of claim and the notice of hearing in accordance with Sections 25 and 26 of the NASD Code of Arbitration Procedure ("NASD Code"). Accordingly, the arbitration panel determined to proceed in the absence of M. Malenfant pursuant to its authority set forth in Section 29 of the NASD Code and the arbitration panel determined that M. Malenfant would be bound by the arbitration panel's determination on all issue submitted.

The arbitration panel also determined that L. Malenfant and Biltmore Equities would be bound by the panel's determination on all issues submitted despite their failure to file a written answer to the claim or crossclaim. The basis for this decision was that L. Malenfant appeared and testified on behalf of Biltmore Equities and in his individual capacity. The arbitration panel also found that these Respondents were obligated to arbitrate this dispute pursuant to Section 12 of the NASD Code.

The arbitration panel further found that U. S. Securities would be bound by the arbitration panel's decision on all issues submitted despite its failure to file a Submission Agreement with the NASD. The arbitration panel determined that U. S. Securities was also obligated to arbitrate this dispute pursuant to Section 12 of the NASD Code. U. S. Securities did answer the claim and appeared at the hearing through its representative A. James Miranti.

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. The claim asserted by Superstein in all capacities against U. S.

Securities shall be and is denied and dismissed in its entirety;

2. U. S. Securities' Motion for Directed Verdict which was taken under advisement by the arbitration panel is therefore denied and dismissed as moot;

3. U. S. Securities' crossclaim against M. Malenfant, L. Malenfant and Biltmore Equities is also denied and dismissed as moot;

4. M. Malenfant, L. Malenfant and Biltmore Equities are jointly and severally liable for and shall pay to Saperstein in his individual capacity and as trustee for the DMD Saperstein Defined Benefit Plan and as trustee for Abbey Saperstein, the sum of thirty nine thousand one hundred seventy nine dollars and sixty three cents (\$39,179.63); and,

5. The parties shall each bear their own costs, expenses and attorney's fees incurred in this proceeding.

FORUM FEES

Pursuant to Section 43c of the NASD Code, the following Forum Fees are assessed. The NASD shall retain the \$150.00 non-refundable claim filing fee and the \$500.00 hearing session deposit previously paid to the NASD by Claimants. M. Malenfant, L. Malenfant and Biltmore Equities are jointly and severally liable to reimburse Claimants directly in the amount of the \$650.00 fee paid to the NASD by Claimants. The NASD shall also retain the \$500.00 non-refundable crossclaim filing fee and the \$600.00 hearing session deposit previously made with the NASD by U. S. Securities.

Forum Fees were calculated on the basis of \$500.00 per hearing session for one hearing session held on May 18, 1992.

Concurring Arbitrators' Signatures

Name

Dated

/S/ Herbert S. Kahn

June 20, 1992

Herbert S. Kahn

Presiding Chairman/Public Arbitrator

/S/ James C. Sell

June 29, 1992

James C. Sell

Panelist/Public Arbitrator

/S/ Robert Flenge

June 20, 1992

Robert Flenge

Panelist/Industry Arbitrator

Date award served by the NASD: July 7, 1992