

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Victoria M. Ayres

vs.

NASD #92-00184

Name of Respondents

Toluca Pacific Securities Corp.  
William Alverson

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REPRESENTATION

For Claimant: Steven Wasserman, Esq. and Sarah Lucas, Esq. of Sedgwick,  
Detert, Moran & Arnold, San Francisco, California

For Respondents:

Toluca Pacific Securities (Toluca): Sheldon M. Jaffe, Esq.,  
Los Angeles, California

William Alverson (Alverson): Michael A. Oswald, Esq. of Oswald & Yap,  
Newport Beach, California

CASE INFORMATION

Statement of Claim filed: January 20, 1992

Claimant's Submission Agreement signed: January 16, 1992

Statement of Answer filed by Respondents:

Toluca: March 20, 1992

Alverson: March 19, 1992

Respondents' Submission Agreements signed:

Toluca: February 13, 1992

Alverson: March 17, 1992

HEARING INFORMATION

Prehearing Conference Date/Sessions: September 17, 1992 - one session (via telephone conference)

Hearing Date/Sessions: September 22, 1992 - two sessions  
September 23, 1992 - one session

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged: breach of contract, breach of fiduciary duty, negligence, fraud and misrepresentation, and violation of rules of the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) in the purchase and sale of common stock of Kushner Locke Co., a bond issued by Southern California Public Power Authority and E.N. Phillips Company. Claimant contacted Alverson for investment advice in May of 1990, explaining she wanted conservative investments, and moved her account from Stuart James Co. when Alverson went to Toluca. Claimant originally purchased common stock of Kushner Locke Co. and the bond and when the Kushner price dropped dramatically; she was instructed to sell both and purchase E.N. Phillips Co. common stock. Claimant's repeated calls to Alverson or Toluca regarding her account were not returned.

Respondent Alverson alleged that claimant had advised him that her family had substantial wealth and assets, that she asked for an investment to recoup her losses from the Kushner Locke Co. loss and that full disclosure was made regarding the investments.

Respondent Toluca denied all substantive allegations of the Statement of Claim and alleged: claimant came to Toluca as a result of her relationship with Alverson and not in the normal course of business, that Toluca believed E.N. Phillips Co. was a sound long-term investment and full disclosure was made.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$41,584.00;
2. Loss of earnings of \$5,407.00;
3. Punitive damages of \$25,000.00;
4. Costs;
5. Attorneys' fees; and
6. Such other relief as the arbitrators may deem just and proper.

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. Respondents Alverson and Toluca Pacific Securities are jointly and severally liable for and shall pay claimant:
  - A) Compensatory damages of \$17,715.00; and
  - B) Loss of earnings of \$2,014.00.
2. The claim for punitive damages is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$500 hearing session fee previously deposited by the claimant. Forum Fees assessed against Respondent Alverson are for \$500.00 and Respondent Toluca Pacific Securities for \$500.00, calculated as follows: three hearing sessions times \$500.00/session, minus \$500.00 already paid by claimant as a hearing deposit.

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

ARBITRATION PANEL

Public/Industry

ies

Public Arbitrator

Public Arbitrator

Industry Arbitrator

DATE SERVED: 10/06/92

  
Justin S. Maxson

Date of Decision: 9/23/92

OTHER COSTS

None.

FORUM FEES

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ARBITRATION PANEL

Name

Public/Industry

Concurring Arbitrators' Signatures

1

I.

Public Arbitrator

Franklin Silver

Public Arbitrator

Industry Arbitrator

DATE SERVED: 10/06/92

  
Franklin Silver

10/5/92

Justin S. Mazzone

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

OTHER COSTS

None.

FORUM FEES

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

ARBITRATION PANEL

Name

Public/Industry

Concurring Arbitrators' Signatures

Peter F. Sloss, Esq.

Public Arbitrator

Franklin Silver

Public Arbitrator

Justin S. Mazzon

Industry Arbitrator

  
Peter F. Sloss, Esq.

DATE SERVED: 10/06/92

Franklin Silver

Justin S. Mazzon

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