

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Steve A. Wirtz

NASD Arbitration  
No. 92-00695

Name of Respondents

Toluca Pacific Securities, Inc.  
William M. Alverson

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REPRESENTATION

For Claimant: H. Thomas Fehn, Esq. of Fields, Fehn & Sherwin - Los Angeles, California

For Respondent, Toluca Pacific Securities, Inc.: Sheldon M. Jaffe, Esq. - Los Angeles, California

For Respondent, William M. Alverson - In Pro Se

CASE INFORMATION

Statement of Claim filed: February 25, 1992

Claimant's Submission Agreement signed on: February 12, 1992

Statement of Answer filed by Respondent, Toluca Pacific Securities, Inc. on: March 16, 1992

Statement of Answer filed by Respondent, William M. Alverson on: April 21, 1992

Respondent, Toluca Securities, Inc.'s Submission Agreement signed on: March 3, 1992

Respondent, William M. Alverson's Submission Agreement signed on: April 15, 1992

HEARING INFORMATION

Pre-Hearing Conference: October 29, 1992 - One Session

Hearing Dates/Sessions: November 2, 1992 - Three Sessions

Hearing Location: Los Angeles, California

#### CASE SUMMARY

Claimant, alleged that Respondent, William M. Alverson (Alverson), while employed by Respondent, Toluca Securities, Inc. (Toluca), acted in reckless disregard of Claimant's best interests and in a manner wholly inconsistent with his express investment objectives. It is also alleged that Toluca inadequately supervised the sales efforts of Alverson and actively encouraged the fraudulent misrepresentations which he made. Said act related to the purchase of EN Phillips shares which subsequently lost value.

Respondent, Toluca, alleged they believed that the EN Phillips investment represented a sound special growth situation. Toluca further alleged that this type of investment was desired by the Claimant and that Claimant, after discussion with Alverson, made an informed decision concerning the merits of the investment.

Respondent, Alverson, alleged that losses incurred in Claimant's accounts were the result of his investment objectives and his desire for large returns and not the result of any improper or negligent investment advice by Alverson.

#### RELIEF REQUESTED

Claimant requested general damages in the approximate amount of \$90,000.00, punitive damages, interest, costs and attorneys' fees.

Respondents requested dismissal of the claim in its entirety, costs and fees.

#### 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 original(s) remain on file with the NASD.

Respondent, Alverson, was originally represented by Michael A. Oswald of Oswald and Yap of Newport Beach, California. Said representation was withdrawn after the pre-hearing conference and before the commencement of the formal hearing. The hearing was conducted with Alverson representing himself.

#### 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, Toluca Pacific Securities, Inc. and William M. Alverson, are jointly and severally liable and shall pay to Claimant, Steve A. Wirtz, the sum of Eighty Four Thousand, Two Hundred Eighty Eight Dollars and Twenty Five Cents (\$84,288.25) plus interest thereon in the amount of Six Thousand Six Hundred Seventy Two Dollars and Seventy One Cents (\$6,672.71).
2. By way of rescission, Claimant, Steve A. Wirtz, shall surrender all right title and interest in the EN Phillips shares to Respondent, Toluca Pacific Securities, Inc.
3. No punitive damages are awarded.

4. No attorneys' fees are awarded.
5. The parties shall each bear their respective costs.
6. Respondent, Toluca Pacific Securities, Inc., shall reimburse the Claimant \$500.00 representing Claimants hearing session deposit with the NASD.

**FORUM FEES**

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


Respondents, Toluca and Alverson, are jointly and severally assessed and shall pay to the NASD the sum of \$1,300.00 representing assessments for one pre-hearing conference at \$300.00 and three hearings at \$500.00 each less the \$500.00 reimbursed by Respondents to Claimant.

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

**ARBITRATORS**

Public/Industry  
Industry Panelist  
Public Panelist  
Public Chairperson

Concurring Arbitrators' Signatures

  
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Date of Decision:

Nov. 2, 1992

Served Nov 18, 1992