

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Margaret M. Downey/Estate of George S. Downey

92-00835

Name of Respondents

**First Choice Securities, Inc., Eugene Hunter,
and Derek Yamada**

REPRESENTATION OF PARTIES

For Claimant at the hearing: Douglas L. Boyd, Esq., Tulsa, Oklahoma.

None of the Respondents attended the hearing.

CASE INFORMATION

Statement of Claim filed March 10, 1992. Amended Statement of Claim filed October 1, 1992.

Claimants' Submission Agreement signed on April 21, 1992 by Margaret M. Downey, Personal Representative of the Estate of George S. Downey, Deceased.

Statement of Answer filed by Respondent, Eugene Hunter on August 21, 1992.

HEARING INFORMATION

Hearing date: September 14, 1993 for one (1) session.

Hearing Location: Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant Margaret Downey ("Margaret"), on behalf of the estate of George Downey ("George") alleged in the Statement of Claim that George purchased 150,000 shares of common stock of REpHEX, Inc. from Respondent First Choice Securities, Inc. ("First Choice"), through its broker, Respondent Eugene Hunter ("Hunter"). Margaret alleged: 1. The \$1.00 purchase price paid by George for the stock was an artificially inflated price and did not reflect the market price of the stock on January 28, 1991; and 2. George Downey was not a suitable purchaser for the large number of shares sold to him by First Choice.

Claimant Margaret Downey alleged in the Amended Statement of Claim that 1. the principals of First Choice, Respondents Jay Fertman, Sheldon Fertman, Mark D. Long, and Derek Yamada manipulated the market for REpHEX stock so that the \$1.00 purchase price paid by George Downey was artificially inflated and did not reflect a true market price of the stock on January 28, 1991; 2. that George Downey was not a suitable purchaser for the large number of shares sold to him by First Choice; 3. that First Choice and its principals improperly represented to George Downey that the listing of REpHEX stock on NASDAQ was imminent.

Respondent Eugene Hunter stated in his Answer that First Choice recommended that its brokers sell REpHEX, Inc. to its customers. Hunter stated that he had no knowledge that Sheldon Fertman and Derek Yamada were dominating and controlling the trading market in the securities of REpHEX, Inc. Hunter further stated that he believed the stock was suitable for George Downey based upon the financial statements and information which George submitted to First Choice.

RELIEF REQUESTED

Claimant requested damages in the amount of \$137,000.00 which is an amount equal to the purchase price of the stock less the price received from the sale of the 15,000 shares and the present value of the stock.

Respondent Eugene Hunter did not specifically set forth a requested relief in his Statement of Answer.

OTHER ISSUES CONSIDERED & DECIDED

After the hearing and prior to the panel's decision, Claimant dismissed Sheldon Fertman as a Respondent to the arbitration. Respondent, Mark Long was removed as a party pursuant to the stay in bankruptcy. Respondent Jay Fertman was dismissed without prejudice because the N.A.S.D. could not effectuate proper notice of the claim and notice of the hearing due to an insufficient address which was supplied by claimant to the N.A.S.D.

Respondent Eugene Hunter did not file with the N.A.S.D., a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the N.A.S.D. Code of Arbitration Procedure ("Code") and having answered the claim and having received notice of the hearing, is bound by the determination of the arbitration panel on all issues submitted.

Upon review of the file, the panel has determined that Respondent First Choice has been properly served with the Statement of Claim pursuant to Section 13 and 25 of the Code of Arbitration Procedure. The panel also determined that Respondent had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 remains on file with the N.A.S.D.

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, First Choice Securities, Inc. and Eugene Hunter shall be and hereby are jointly and severally liable for and shall pay to the Claimant, Margaret M. Downey/Estate of George S. Downey, damages in the amount of One Hundred Thirty Five Thousand Dollars and No Cents (\$135,000.00);
2. Respondent Derek Yamada was not found liable and therefore the panel dismissed the claim against him;
3. Each of the parties shall bear their own costs and expenses other than those specifically set forth under Forum Fees below.

FORUM FEES

Pursuant to Section 43(c) of the N.A.S.D. Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing session X \$750.00 = \$750.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by the Claimant.

By The Arbitration Panel:

Dated:

August 9, 1994

Kelley L. Cornelius, Esq.

Kelley L. Cornelius, Esq.

Presiding, Public Arbitrator

July 27, 1994

Robert N. Naifeh, Esq.

Robert N. Naifeh, Esq.

Public Arbitrator

July 25, 1994

Carolyn Anne Messler

Carolyn Anne Messler

Industry Arbitrator

Date Award Served By the NASD: August 18, 1994