



Respondent Jay Fertman was not barred by the State of Colorado from selling stock and that in fact, the State of Colorado began an investigation of the sale of Rephex whereby they did not stop the sale of Rephex stock. Respondent Lisa Fertman asserted that the State of Colorado investigation caused the majority of the market makers in Rephex to voluntarily decide to cease making a market in the stock. Respondent Lisa Fertman further asserted that she informed Claimants of the risks associated with the purchase of Rephex stock, including the fact that Claimants could lose all or a substantial portion of their investment and therefore, Respondent Lisa Fertman is not liable for Claimants own investment decision.

Respondent First Choice Securities failed to file an Answer to the Statement of Claim.

Respondent Jay Fertman failed to file an Answer to the Statement of Claim.

#### RELIEF REQUESTED

Claimants Robert E. & Marjorie L. Tevis requested \$7,070.00 in actual damages.

Respondent Lisa Fertman requested the claim be dismissed.

Respondent First Choice Securities failed to file an Answer to the Statement of Claim.

Respondent Jay Fertman failed to file an Answer to the Statement of Claim.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert A. Babcock, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 13, 1992, by the Respondent Lisa Fertman on April 21, 1992 but not signed by the Respondents First Choice Securities and Jay Fertman as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondents First Choice Securities and Jay Fertman were served a copy of the Statement of Claim by regular mail on April 8, 1992 and given an opportunity to

respond, which they failed to do. Respondent Jay Fertman was notified on May 7, 1992, via certified mail, that his Statement of Answer was overdue. The signed certified mail receipt was returned to the NASD, Inc. date stamped May 11, 1992, evidencing his receipt of this correspondence. Respondent Jay Fertman was notified on May 19, 1992, via certified mail, of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. The signed certified mail receipt was returned to the NASD, Inc. dated May 26, 1992, evidencing his receipt of this correspondence. Respondent Jay Fertman failed to file an Answer to the Statement of Claim.

Respondent First Choice Securities failed to file an Answer to the Statement of Claim.

2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondents First Choice Securities and Jay Fertman were required to submit to this arbitration proceeding and are, therefore, bound by the arbitrator's ruling and determination.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents First Choice Securities and Lisa Fertman are jointly and severally liable and shall pay to the Claimants Richard E. & Marjorie L. Tevis the sum of \$7,070.00 in damages.
2. The claim of Claimants Robert E. & Marjorie L. Tevis against Respondent Jay Fertman is dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Robert E. & Marjorie L. Tevis shall be retained by the NASD, Inc. Respondents First Choice Securities and Lisa Fertman are jointly and severally liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

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AFFIRMATION

I, ROBERT A. BABCOCK, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: December 2, 1992