

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	:	
David R. Epstein	:	
	:	
Claimant	:	CASE #92-01465
	:	AWARD
vs.	:	
D.H. Blair & Co. Inc.	:	
vs.	:	
Thomas Gallo	:	
	:	
Respondent	:	

REPRESENTATION

In a claim filed with the National Association of Securities Dealers, Inc. on April 29, 1992, Claimant David R. Epstein who appeared Pro Se, alleged that in February 1990 Respondent Thomas Gallo, an Account Executive with Respondent D.H. Blair & Co., Inc. solicited the purchase of 3,500 shares of Cattleguard ("CGXX") by assuring that its value would dramatically increase and subsequently purchased the stock at 1-1/2 which was 1/8 over Claimant's limit, thus overcharging him \$437.50. Claimant further alleged that in April 1990 Respondent Thomas Gallo solicited the purchase of 3,000 Puretech International ("Puretech") at 1-1/16 by communicating very high expectations for the company, at which time, Claimant suggested the sale of CGXX whereby Respondent Thomas Gallo advised against the sale claiming it would be premature and inappropriate. Claimant contended that in June & July 1990 he tried to place orders to sell CGXX and Puretech whereby Respondent D.H. Blair & Co. Inc. employees advised Claimant to hold these positions. Claimant further contended that in August 1990 Respondent Thomas Gallo contacted him to advise him that the plunging CGXX price represented a real opportunity and Respondent Thomas Gallo recommended the purchase of 6,000 warrants at a limit of 16 cents by assuring that CGXX would at least double in the next several weeks. Claimant asserted that on August 22, 1990 Respondent Thomas Gallo recommended the sale of 3,000 Puretech at 13/16 because it was best to get out now and recommended Claimant use the proceeds to purchase 3,100 Lidak Pharmaceuticals Class A Warrants at 25/32. Claimant further

asserted that in October 1990 Respondent Thomas Gallo contacted him to inform him that CGXX had filed Chapter 11 bankruptcy and that he would contact Claimant later with further information. Claimant argued that by the end of 1991 Respondent D.H. Blair & Co., Inc. failed to accept his transfer request of his holdings in Lidak Class A Warrants to Charles Schwab & Co. whereby during the delay the value decreased. Claimant further argued that Respondents D.H. Blair & Co., Inc. misrepresented their previous history, withheld key negative information, and executed trades at prices higher than agreed to, thus, causing Claimant to sustain losses.

Respondent D.H. Blair & Co., Inc. by and through their counsel Marc Israel, Esq. of Bachner, Tally, Polevoy & Misher, New York, New York, maintained that they deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in Claimant's Statement of Claim, and specifically deny that they continually took advantage of Claimant. Respondent D.H. Blair & Co., Inc. further maintained that they deny they overcharged Claimant \$437.50 for the purchase of 3,500 common shares of Cattleguard ("CGXX") and refer to copies of Claimant's account statements reflecting the purchase for their terms. Respondent D.H. Blair & Co., Inc. contended that they deny Claimant suffered "growing losses" as of June and July, 1990, as Claimant had not sold any securities out of his account at the time. Respondent further contended that they deny that Claimant suffered an initial loss of the overcharge of 9 cents/warrants x 6,000 warrants or \$540.00 and refer to copies of Claimant's account statements. Respondent asserted that they deny that they would not allow Claimant's holdings to be transferred to Charles Schwab & Co. and admits Claimant request that Respondent D.H. Blair & Co., Inc. transfer his holding but that such request was rejected due to a computer "block" placed on Claimant's account when Claimant previously requested that his account not be transferred to a brokerage company who his account executive, Thomas Gallo, was leaving to work for. Respondent further asserted that they properly supervised and monitored the actions of its brokers and employees, and, as such, are not liable for any damages Claimant may have suffered.

Respondent further asserted a Third-Party Claim against Third-Party Respondent Thomas Gallo whereby they demand that if Claimant is awarded any damages whatsoever on the Statement of Claim against them, that Third Party Respondent Thomas Gallo completely indemnify and provide contribution to Respondent D.H. Blair & Co., Inc. for said amount of damages.

Third-Party Respondent Thomas Gallo who appeared Pro Se, maintained that on February 21, 1990 he recommended to Claimant David R. Epstein the purchase of 3,500 shares of Cattleguard common stock based on the information which Claimant was sent regularly. Third Party Respondent Thomas Gallo further maintained that in March 1990 he updated Claimant on both the positive and negative developments of CGXX and this was illustrated through "Compliance Approved" Public Relations Material. Third Party Thomas Gallo contended that in April 1990 he recommended the purchase of Puretech Int'l based on the company's innovative plastic recycling technology and immediately following this and every transaction he made confirmation calls to reiterate, "How much was purchased," and at what price. Third Party Respondent Thomas Gallo further contended that in June & July 1990 he is unaware of any conversation Claimant had with any other associate of Respondent D.H. Blair & Co., Inc. and that he spoke on a regular basis to Claimant, so that he could be kept up to date on the progress of CGXX and Puretech. Third Party Respondent Thomas Gallo asserted that when the price of CGXX was lower, he suggested that Claimant purchase warrants. Third Party Respondent, Thomas Gallo further asserted that in August 1990 he contacted Claimant to recommend he sell his Puretech holdings and he agreed to purchase 3,100 warrants of Lidak Pharmaceuticals. Third Party Respondent Thomas Gallo argued that on December 13, 1991 he resigned from Respondent D.H. Blair & Co., Inc. at which time, all of his clients were sent a "negative consent" letter telling them unless they write back their account was going to be transferred to his new firm and he did not receive Claimant's account, therefore, any communication between Claimant and Respondent D.H. Blair & Co., Inc. after that date cannot involve him, whereby he denies any responsibility for any damages Claimant seeks.

RELIEF REQUESTED

Claimant, David R. Epstein requested \$9,156.00 in actual damages plus interest and reimbursement of the NASD filing fee.

Respondent D.H. Blair & Company, Inc. requested the claim be denied and they be awarded costs and disbursements, including attorneys' fees.

Third Party Claimant D.H. Blair & Company, Inc. requested indemnification together with costs and reasonable attorneys' fees against Third-Party Respondent Thomas Gallo.

Third-Party Respondent Thomas Gallo requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Eugene J. McCabe, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 22, 1992 by the Respondent D.H. Blair & Co., Inc. on June 12, 1992 and by the Third Party Respondent Thomas Gallo on July 23, 1992.

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. Respondent D.H. Blair & Co., Inc. is liable and shall pay to the Claimant David R. Epstein the sum of \$6,107.30 in damages.
2. Third-Party Respondent Thomas Gallo is liable and shall pay to the Third Party Claimant D.H. Blair & Co., Inc. the sum of \$2,033.73 in damages.
3. The Claimant's request for interest is denied.
4. The parties shall bear their respective costs, including attorneys' fees.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David R. Epstein shall be retained by the NASD, Inc. Respondent D.H. Blair & Co., Inc. is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement. The \$575.00 filing fee previously deposited with the NASD, Inc. by the Respondent D.H. Blair & Co., Inc. shall be retained by the NASD, Inc.

AFFIRMATION

I, **EUGENE J. MCCABE, 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: November 4, 1992