

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

William J. Peters

vs.

92-02340

Name of Respondents

OTRA Clearing, Inc.  
R.B. Webster Investments, Inc.  
William David Jones  
Richard Dale Kerwit  
Brad Nirenberg

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on July 14, 1992, Claimant William J. Peters, through his representative, Martin J. Gofberg of Securities Arbitration Centers, Fort Lauderdale, FL, alleged that Respondents R.B. Webster Investments, Inc., OTRA Clearing, along with Respondents William David Jones, Brad Nirenberg and Richard Dale Kerwit recommended unsuitable investments to the Claimant, which included Ringside International Broadcasting, UTS-Applied Geometrics, Bio Monitor Systems, LMA Technical and Video Superstores stock. The Claimant contended that after paying for the purchase of these shares, the stock was sold for almost nothing, without the Claimant's authorization. The Claimant further contended that the Respondents misrepresented facts, were negligent in their dealings with him, and that he should be compensated for losses he incurred due to the Respondents' negligence.

Respondent OTRA Clearing, Inc., through its in-house counsel, Scott G. Monson, Esq., maintained that it denies being a general agent for R.B. Webster Investments, Inc. and that it affirmatively states that OTRA acted specifically as a clearing firm, pursuant to the terms contained in the clearing agreement, to only provide certain back office clearing functions on behalf of R.B. Webster Investments, Inc. Respondent OTRA Clearing Inc. further maintained that the Claimant failed to allege any activity or involvement concerning OTRA, and that rules and procedures referenced by the Claimant pertain to the introducing broker dealer and not to this Respondent's limited function as a clearing firm. The Respondent OTRA Clearing, Inc. contended that it committed no error and in no way has caused any damage or injury to the Claimant.

Respondents, R.B. Webster Investments, Inc., William David Jones and Brad Nirenberg, in a joint statement of answer, through their counsel, Howard A. Tescher, Esq., of Atlas Pearlman & Trop, P.A., Fort Lauderdale, FL, maintained that any loss sustained by the Claimant was caused by his failure to pay a \$25.00 maintenance fee. resulting in the sales in question in order to help cover this debt. The Respondents further maintained that the Claimant's losses resulted from his own investment decisions and the subsequent decline in value of the securities purchased, and that they cannot be held liable for the failure of any corporations in which Claimant William J. Peters purchased securities.

Respondent Richard Dale Kerwit failed to file an answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant William J. Peters requested \$6,073.00 in actual damages, plus interest, and punitive damages in the amount of \$3,900.00 along with costs and attorney's fees.

Respondent Otra Clearing, Inc. requested that the claims of the Claimant be dismissed and that it be awarded its costs and attorney's fees.

Respondents R.B. Webster Investments, Inc., William David Jones and Brad Nirenberg requested that the claims of the Claimant be dismissed and that they be awarded costs and attorney's fees.

Respondent Richard Dale Kerwit failed to file an answer to the Statement of Claim.

#### **OTHER ISSUES**

1. The Motion to Dismiss filed by Respondent Otra Clearing Corp. is denied.
2. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Richard Dale Kerwit, was served a copy of the Statement of Claim by regular mail and given an opportunity to respond, which he failed to do.
3. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Richard Dale Kerwit having had notice of the claim, was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Steven R. Reininger, 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 July 6, 1992, by Respondent Otra Clearing, Inc. on August 24, 1992 and by Respondents R.B. Webster Investments, Inc., Brad Nirenberg and William David Jones on September 9, 1992. Respondent Richard Dale Kerwit did not submit to this matter as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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:

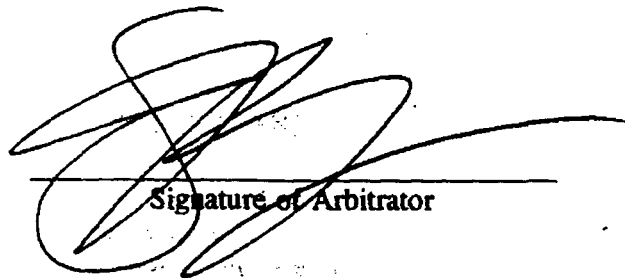
1. The claims of the Claimant William J. Peters against Respondents William David Jones, Brad Nirenberg and Richard Dale Kerwit are dismissed in their entirety.
2. Respondents R.B. Webster Investments, Inc. and Otra Clearing, Inc. are jointly and severally liable and shall pay to Claimant William J. Peters \$6,073.00 in actual damages. These Respondents are found liable based on the acts of their agents identified at paragraph 1 above.
3. Respondents R.B. Webster Investments, Inc. and Otra Clearing, Inc. are jointly and severally liable and shall pay interest to Claimant William J. Peters at the rate of 12% from November 15, 1989 to the date of payment of the award.
4. The claimant's request for Punitive damages is denied.
5. The parties shall bear their respective costs and attorney's fees.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents R.B. Webster Investments, Inc. and Otra Clearing, Inc. are jointly and severally liable and shall pay \$150.00 to the Claimant as reimbursement of the fee.

The specific agents were not found liable because the record did not reveal specifically which individual Respondent committed the unlawful acts. However, it is found that one or more of them did while acting in the scope of R.B. Webster's employment.

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**AFFIRMATION**

I, **STEVEN R. REININGER, 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:**      **March 2, 1993**