

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harold Birghenthal

92-02697

Name of Respondent

Barry Potter

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 11, 1992, Claimant Harold Birghenthal, who appeared Pro Se, alleged that Respondent Barry Potter solicited him to purchase Club Theater Network stock by insisting that the stock was "a very hot, hot issue, to be capitalized by Ted Turner" and offered to buy as much shares as he could for Claimant at \$3.00 per share. Claimant further alleged that Respondent purchased 500 shares at \$3.00 per share and 600 shares at \$10.25, at which time, Claimant expressed his concern, whereby, Respondent assured him the stock would double. Claimant contended that Respondent even contacted him to purchase 300 additional shares at \$1.75. Claimant further contended that everytime he asked for a prospectus, he was informed that it was not available but after some discussions, Respondent sent him a prospectus whereby after speaking to the CEO of Club Theater Network and reading the prospectus, Claimant realized he would not have invested in the stock had the prospectus been available to him originally. Claimant asserted that Respondent offered him, Shoppers American, Inc. stock for \$5.00 per share, whereby Claimant declined to purchase; however, a week later Respondent stated Claimant could purchase 1,000 shares at \$1.50 per share "because of an error in bookkeeping", at which time, Claimant purchased the stock. Claimant further asserted that when he checked the history of the company the stock never surpassed \$0.81 in price. Claimant further alleged that Respondent tried to tout Claimant into Opti Corp and All American Semi Conductor; however, Claimant refused because Respondent's clearing house, Newbridge, had refused to pay Claimant the correct interest on a C.D. Claimant further asserted that because of Respondent's actions Claimant lost money.

Respondent Barry Potter, who appeared Pro Se, maintained that all of Claimant Harold Birghenthal's transactions were authorized and Respondent executed Claimant's orders

in accordance with his authorization. Respondent further maintained that he provided a prospectus of Club Theater when he sent the confirmation to Claimant for his initial purchase. Respondent contended that he never told Claimant that Ted Turner was going to capitalize Club Theater. Respondent further contended that in his dealings with Claimant, he did nothing wrong in the presentation or execution of his orders and Claimant received his prospectus in a timely manner, at which time, Claimant continued to authorize and pay for all trades in the security.

RELIEF REQUESTED

Claimant Harold Birghenthal requested \$10,000.00 in actual damages.

Respondent Barry Potter requested the claim be dismissed.

AWARD

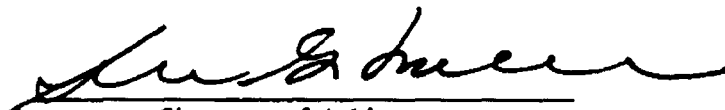
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stephen G. Melcer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 31, 1992 and by the Respondent on December 1, 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. The claim of Claimant Harold Birghenthal against Respondent Barry Potter is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Harold Birghenthal shall be retained by the NASD, Inc.

AFFIRMATION

I, **STEPHEN G. MELCER, 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.

A handwritten signature in cursive script, appearing to read "Stephen G. Melcer", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: March 17, 1993