

**N.A.S.D. FINAL ORDER**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Doley Securities, Inc.

92-02780

Name of Respondent/Counter-Claimant

S.N. Phelps & Co.

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**REPRESENTATION**

For Claimant/Counter-Respondent: Doley Securities, Inc. ("Doley Securities") was represented by Harold E. Doley, Jr., Doley Securities, Inc., New Orleans, Louisiana.

For Respondent/Counter-Claimant: S.N. Phelps & Co. ("S.N. Phelps") was originally represented by Randall W. Atkins of S.N. Phelps & Co., Greenwich, Connecticut, and by Eleanora M. Crosby, of S.N. Phelps & Co., Greenwich, Connecticut.

**CASE INFORMATION**

Statement of Claim filed on: August 17, 1992.

Claimant/Counter-Respondent's Submission Agreement signed: August 15, 1992 by Harold E. Doley, Jr., Chairman, Doley Securities, Inc.

Statement of Answer filed by Respondent/Counter-Claimant S.N. Phelps on: August 19, 1992. Respondent/Counter-Claimant's Submission Agreement was signed: October 20, 1992 by Stanford N. Phelps, Chairman, S.N. Phelps & Co.

Amended Answer, Motion to Dismiss and a Counterclaim filed by Respondent/Counter-Claimant on: October 26, 1992.

Motion to Dismiss filed by Claimant/Counter-Respondent on: March 7, 1994.  
Response to Motion to Dismiss filed: March 9, 1994.

### **HEARING INFORMATION**

Pre-Hearing Conference: None Held.  
Hearing Dates/Sessions: March 3, 1993 for Two (2) sessions.  
Hearing Location: New Orleans, Louisiana.

### **CASE SUMMARY**

Claimant/Counter-Respondent Doley Securities alleged that an agent of Respondent/Counter-Claimant S.N. Phelps knowingly made false claims against Doley Securities to the Resolution Trust Corporation (RTC), as well as to other members of the RTC securitization underwriting syndicate. Doley Securities also alleged that when S.N. Phelps discovered the actions of their agent, they failed to take corrective measures.

Respondent S.N. Phelps denied the material allegations of the Statement of Claim, alleging the following:

1. The dispute in this case is more properly between Doley Securities and former Doley Securities employee Timothy Martin, who became an employee at S.N. Phelps after being employed at Doley Securities;
2. The activities by Martin were related to an incident that occurred before Martin was employed by S.N. Phelps;
3. Any conduct by Martin with respect to Doley Securities was undertaken independently by Martin without the knowledge or consent of S.N. Phelps; and
4. Once S.N. Phelps learned from Doley Securities about the activities of Martin, it met with Martin and obtained from him an agreement that he would have no further correspondence with Doley Securities relating to any dispute on business done prior to his employment at S.N. Phelps. S.N. Phelps did take corrective action upon learning of the dispute.

S.N. Phelps asserted a counterclaim against Doley Securities alleging that Doley Securities contacted the NASD in this matter in an attempt to injure Phelps's reputation and financial well being.

### **RELIEF REQUESTED**

Doley Securities requested that the Panel find Respondent S.N. Phelps liable to Claimant Doley Securities, Inc. for damages in the amount of \$100,000.00

S.N. Phelps requested that Doley Securities' claim be dismissed and that an award be entered in favor of S.N. Phelps against Claimant Doley Securities, Inc. for the amount of \$500,000.00. S.N. Phelps also requested that the panel find Doley Securities liable for all costs, legal or otherwise incurred by S.N. Phelps as a result of this action.

### **OTHER ISSUES CONSIDERED & DECIDED**

On December 1, 1993, the Panel of Arbitrators signed an Interim Order. In it the Panel determined that Doley Securities, Inc. shall be liable to S.N. Phelps & Co. for the amount of \$967.65, representing the expenses incurred by Respondents in complying with the subpoena for the hearing on March 3, 1993 in this matter. The Interim Order is hereby attached and incorporated into this Final Order by reference.

S.N. Phelps responded to, but did not oppose the March 7, 1994 Motion to Dismiss submitted by Doley Securities. S.N. Phelps also agreed to withdraw its counterclaim against Doley Securities, provided Doley Securities reimburse S.N. Phelps for costs in the amount of \$3,030.78. That total represents the \$967.65 award previously designated by the Interim Order; an amount of \$813.13 for expenses incurred by S.N. Phelps for the proposed November 17, 1993 hearing; and the \$1,250.00 in arbitration fees tendered by S.N. Phelps.

### **FINAL ORDER**

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. The NASD Interim Order on the claim asserted by Doley Securities, Inc. against S.N. Phelps is hereby attached and incorporated into this Final Order by reference. Pursuant to that order, Claimant/Counter-Respondent Doley Securities, Inc. is liable for and shall pay to Respondent/Counter-Claimant S.N. Phelps & Co. the sum of \$967.65 as reimbursement of the expenses incurred by Mr. S. N. Phelps in complying with the subpoena to appear at hearing on March 3, 1993 issued by Doley Securities, Inc.;
2. Furthermore, Claimant/Counter-Respondent Doley Securities, Inc. is liable for and shall pay to Respondent S.N. Phelps & Co. the sum of \$1,313.13 as reimbursement of additional costs incurred by the Respondent/Counter-Claimant S.N. Phelps & Co.;
3. The Statement of Claim filed by Claimant/Counter-Respondent Doley Securities, Inc. is hereby dismissed with prejudice;
4. The Counterclaim filed by Respondent/Counter-Claimant S. N. Phelps and Co. is hereby dismissed with prejudice;
5. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
6. Any relief not specifically granted is hereby denied.

#### **OTHER COSTS**

The National Association of Securities Dealers, Inc. shall retain the \$600.00 postponement fee paid by Claimant/Counter-Respondent Doley Securities, Inc. pursuant to Section 30 of the NASD Code of Arbitration Procedure. In addition, the NASD shall retain the \$30.00 fee paid by Respondent/Counter-Claimant S.N. Phelps & Co. as the cost of duplicating tapes of the hearing.

#### **FORUM FEES**

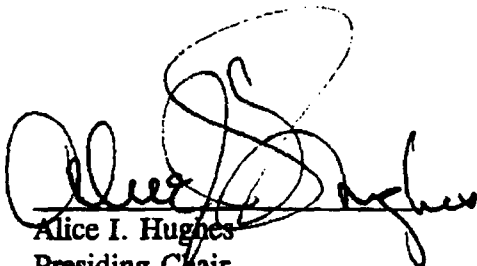
Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions X \$750.00 per hearing session = \$1,500.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by Claimant/Counter-Respondent Doley Securities, Inc. Claimant/Counter-Respondent Doley Securities, Inc. is liable for and shall pay to the NASD additional forum fees in the sum of \$900.00. In addition, the NASD shall retain the \$500.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Respondent/Counter-Claimant S.N. Phelps & Co..

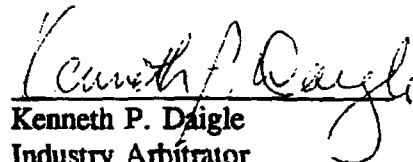
Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL


Dated:

  
Alice I. Hughes  
Presiding Chair  
Industry Arbitrator

2-1-95

  
Kenneth P. Daigle  
Industry Arbitrator

2-18-95

  
Robert J. Eitel  
Industry Arbitrator

2/20/95

Date Order Served By The NASD: