

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Amir Rosenthal

NASD Arbitration
No. 92-02895

Name of Respondent(s)

Toluca Pacific Securities Corporation
Steve Friedman
Peter Blowitz

REPRESENTATION

For Claimant: Paul H. Samuels, Esq., Santa Monica, California

For Respondents: Sheldon M. Jaffe, Esq., Los Angeles, California and
Edward Gartenberg, Esq., Burris, Drulias & Gartenberg, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 27, 1992

Answer to Counterclaim filed: April 19, 1993

Claimant's Submission Agreement signed: August 16, 1992

Joint Statement of Answer filed by Respondents: December 14, 1992

Respondents' Counterclaim filed: March 19, 1993

Respondent's Submission Agreement signed as follows:

Toluca Pacific Securities Corporation: December 4, 1992

Steve Friedman: October 30, 1992

Peter Blowitz: December 4, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates Sessions: July 14, 1993 (two sessions)
July 15, 1993 (two sessions)
July 16, 1993 (two sessions)
July 19, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged that in direct violation of Claimant's instructions, submitted on or before June 4, 1991, Respondents failed to execute 100,000 shares of E.N. Phillips Company common stock. Claimant also alleged breach of contract and breach of fiduciary duty under California Law.

Respondents denied Claimant's allegations and alleged that Claimant during June 1991 requested Respondents to liquidate 100,000 shares of E.N. Phillips Company common stock but at a specific price which was then above the price which large blocks could be sold. Respondents further alleged that there were constant communications between Claimant and Respondents and that Respondents attempted, at all times, to follow Claimant's instructions to the extent that Claimant's instructions could be followed in the market at that time. Respondents also asserted affirmative defenses.

In their Counterclaim, Respondents alleged violations of the California securities laws, stock manipulation, fraud, violations of the California Civil Code, and illegal "parking" of securities.

Claimant denied any liability to Respondents with respect to their Counterclaim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Damages in an amount in excess of \$200,000.00, but less than \$250,000.00; and
2. Punitive damages in the amount of \$200,000.00.

Respondents requested:

1. Dismissal of Claimant's claims;
2. That the cost of proceedings be assessed against Claimant;
3. General damages in an amount to be proven at hearing of at least \$700,00.00;
4. Consequential and incidental damages according to proof;
5. Interest at the legal rate of 10% per annum;
6. Exemplary and punitive damages;
7. Costs of suit;
8. Attorneys' fees to the extent permitted by law; and
9. For such other relief as may be just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, including post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' motion to strike claims made by Claimant, Amir Rosenthal on behalf of third persons not named as Claimants is denied.

2. Respondents Toluca Pacific Securities Corporation, Steve Friedman and Peter Blowitz are jointly and severally liable for and shall pay to Claimant, Amir Rosenthal the sum of \$85,378.00 plus interest at the rate of 10% per annum from June 13, 1991 to the date of payment of this Award.

3. Claimant's claim for punitive damages is denied.

4. All claims by Toluca Pacific Securities Corporation, Steve Friedman and Peter Blowitz, including the claims for exemplary and punitive damages, are dismissed.

5. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by Amir Rosenthal and retain the \$1,000.00 hearing session deposit previously deposited by Toluca Pacific Securities Corporation. Forum fees are assessed against:

Respondents, Toluca Pacific Securities Corporation, Steve Friedman and Peter Blowitz, jointly and severally, in the amount of \$5,000.00, calculated as follows: Eight hearing sessions times \$750.00/session minus the \$1,000.00 hearing deposit retained by the NASD.

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Bayard F. Berman, Esq.	Public Arbitrator
Lou von Dyl	Public Arbitrator
Richard C. Ramos	Industry Arbitrator

Concurring Arbitrators' Signatures

Lou von Dyl

Date of Decision: 9/9/93

Date Served: 09/28/93