

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

First Hanover Securities, Inc.  
The Chicago Corporation

92-03167

**Name of Respondents**

Investors Choice Securities, Inc.  
Berkley C. Badger  
David A. Yungkau

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**REPRESENTATION**

For Claimants, First Hanover Securities, Inc. and the Chicago Corporation, at the hearing: Frank E. Pasquesi, Esq. of Coffield Ungaretti & Harris, Chicago, Illinois.

For Respondents Investors Choice Securities, Inc. and Berkley Badger, at the hearing: Guy Burns, Esq. of Johnson Blakely Pope Bokor Ruppel & Burns, P.A., Tampa, Florida. For Respondent, David Yungkau at the hearing: Pro se.

**CASE INFORMATION**

First Amended Statement of Claim filed: September 17, 1992. Claimants, First Hanover Securities and the Chicago Corporation's Statement of Answer and Affirmative Defenses to Counterclaim filed: April 5, 1993.

Claimant, First Hanover Securities' Submission Agreement signed on: September 29, 1993. Claimant, The Chicago Corporation's Submission Agreement signed on: September 8, 1993.

Respondents, Investors Choice Securities, Inc. and Berkley Badger's Statement of Answer filed on: December 28, 1992. Respondents, Investors Choice Securities, Inc. and Berkley Badger's counterclaim filed: December 18, 1992. Respondent, David Yungkau's Answer filed: November 18, 1992.

Respondent, David Yungkau's Submission Agreement signed on: November 17, 1992.

### **HEARING INFORMATION**

Pre-Hearing Conference sessions: May 19, 1993 for one (1) session with the full panel; October 15, 1993 for one (1) session with the Chairman only.

Hearing Dates/Sessions: October 20, 1993 for two (2) sessions:  
October 21, 1993 for two (2) sessions:  
October 22, 1993 for two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimants First Hanover Securities, Inc. ("First Hanover") and The Chicago Corporation ("TCC") alleged that Respondents, Investors Choice Securities, Inc. ("Investors Choice") and David Yungkau ("Yungkau") knowingly and/or recklessly made numerous untrue statements of material facts and omitted to state material facts necessary to make the statements made, not misleading in light of the circumstances under which they were made, to First Hanover with regard to the price at which Investors Choice had purchased debentures for sale to First Hanover. First Hanover and TCC further alleged that the purpose and effect of Investors Choice and Yungkau's scheme was to perpetrate a fraud upon First Hanover and its clearing firm TCC so that Investors Choice and Yungkau could engage in a risk-free scheme to earn excessive markups, unjustly enriching themselves at First Hanover's and TCC's expense. First Hanover and TCC also alleged that Respondent Berkley Badger ("Badger") is also liable for all acts of Investors Choice and Yungkau due to his executive position with Investors Choice.

Respondents Investors Choice and Badger denied the allegations set forth in the First Amended Statement of Claim. Investors Choice and Badger alleged that claimants have no cause of action since none of the transactions or contracts were between the respondents and claimants or any of its representatives. Investors Choice and Badger also alleged that claimants have failed to mitigate their damages and were negligent in their handling of the transaction and that the statement of claim does not establish a violation of any of the securities laws.

Respondents, Investors Choice and Badger filed a counterclaim to enforce a Settlement Agreement between respondents and claimants. In their response to the counterclaim, First Hanover and TCC denied that a settlement was ever reached between the parties.

Respondent Yungkau denied the allegations set forth in the claim.

### **RELIEF REQUESTED**

Claimants requested damages in the sum of not less than \$4,485,198.12 and that respondents disgorge themselves of all profits arising from their sale of the debentures. Claimants also requested that the counterclaim be dismissed with prejudice.

Respondents, Investors Choice, Badger, and Yungkau requested that the Statement of Claim be denied.

### **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 original remains on file with the NASD.

Respondents Investors Choice Securities and Berkley Badger did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 8 of the Code, and having answered the claim, appeared and testified at the hearing, is bound by the determination of the panel on all issues submitted.

Prior to the hearing, claimants filed a Motion To Strike Respondent's Defenses. The panel denied the motion.

At the conclusion of the claimant's case during the hearing, respondents made an oral Motion For Directed Verdict. The panel denied the motion.

Respondents filed a counterclaim to enforce an alleged settlement agreement between claimants and respondents. The panel denied the counterclaim at the hearing.

### **AWARD**

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

1. The claimant's Statement of Claim is denied and dismissed in its entirety with prejudice:

2. Each of the parties shall bear their own costs and expenses incurred other than those specifically provided for under Forum Fees.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

6 sessions X \$1000 = \$6,000 minus hearing session deposit of \$1000 = \$5,000  
plus \$600 for two pre-hearing conferences at \$300 each = net \$5,600 due the NASD.

All Forum Fees are assessed against Respondents and Respondents are ordered to pay said fees as follows:

Respondent Investors Choice Securities shall pay a total of \$1,980 in Forum Fees, of which \$980 shall be paid to the NASD and \$1000 shall be paid to Claimants as reimbursement for Claimants' initial deposit with the NASD.

Respondent David Yungkau shall pay the NASD \$4,620.

By The Arbitration Panel:

Dated:

11/29/93

Kurt L. Schultz  
Kurt L. Schultz, Esq., Presiding  
Industry Arbitrator

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Richard T. Arden  
Industry Arbitrator

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Ralph Pierce  
Industry Arbitrator

Date Award Served By The NASD: 12-9-93

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**By The Arbitration Panel:**

**Dated:**

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Kurt L. Schultz, Esq., Presiding  
Industry Arbitrator

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Richard T. Arden  
Industry Arbitrator

12/12/93

*Ralph Pierce*  
Ralph Pierce  
Industry Arbitrator

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By The Arbitration Panel:

Dated:

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11-24-93

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Kurt L. Schultz, Esq., Presiding  
Industry Arbitrator

  
Richard T. Arden  
Industry Arbitrator

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Ralph Pierce  
Industry Arbitrator

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