

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

DBL Liquidating Trust, et al.

92-03764

Name of Respondent

Butcher & Company, Inc.
a/k/a Butcher & Singer, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 6, 1992, Claimant DBL Liquidating Trust, by and through Daniel Hume, Esq., of Tenzer, Greenblatt Fallon & Kaplan, New York, NY, states that Drexel Burnham Lambert Incorporated ("Drexel") as predecessor-in-interest to Claimant DBL Liquidating Trust, was during the relevant times a member of the NASD and was a duly registered broker dealer engaged in the stock brokerage business with the general public. Claimant also states that Respondent's Butcher & Company, Inc. predecessor in interest, Butcher & Singer, Inc. ("BSI") was during the relevant times, a member firm of the NASD, and was a duly registered broker dealer engaged in the stock brokerage business with the general public. Claimant alleged that in October 1981, Drexel acted as a co-managing underwriter on behalf of a group of underwriters, of which Respondent was a part, for the offering of 30,000 units of Texas General Resources, Inc. ("TGR") whereby each unit consisted of \$1,000.00 principal amount of 11 1/4 percent subordinated notes due October 1, 1986 (the "Notes") and thirty-five (35) five year Common Stock Purchase Warrants, at which time, the price to the public was \$800.00 per unit with an underwriting discount of \$35.00 per unit. Claimant further alleged that in March 1983, TGR filed for Chapter 11 and in August 1984, the Creditors Committee for the 11 1/4 percent Noteholders and the First Investors Bond Appreciation Fund filed a class action complaint whereby a settlement agreement between Claimant on behalf of Drexel and all Underwriters was executed on January 12, 1988. Claimant contended that in accordance with the settlement, they paid the sum of \$1,100,000.00 in addition to incurring counsel fees and expenses bringing the total sum expended to \$1,335,880.83. Claimant further contended that the agreement among Underwriters signed by each underwriter, including Respondent, required each underwriter to ... "pay its proportionate share based on its underwriting commitment" whereby Respondent's proportionate share of the settlement costs

incurred by Claimant amounts to \$8,905.87. Claimant asserted that despite demands for payment of Respondent's proportionate share, they have thus far failed and refused to make such payment.

Respondent Butcher & Company, Inc. failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant DBL Liquidating Trust requested \$8,905.87 in actual damages plus simple prejudgment interest of 9% as provided for by Section 5004 of the New York CPLR on the proportionate amount from March 21, 1988, together with attorney's fees and costs.

Respondent Butcher & Company, Inc. failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 10 of the NASD Code of Arbitration Procedure the Respondent Butcher & Company, Inc. was re-served a copy of the Statement of Claim by certified mail on January 13, 1993 and given an opportunity to respond, which they failed to do. The signed certified mail receipt was returned to the NASD dated January 26, 1993, evidencing their receipt of this correspondence. Respondent Butcher & Company, Inc. failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Butcher & Company, Inc. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Securities Arbitrator, Gina M. Salerno, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 2, 1992 and not signed by the Respondent as required by Sections 8 & 10 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. Respondent Butcher & Company, Inc. is liable and shall pay to the Claimant DBL Liquidating Trust the sum of \$8,905.87 in damages.

2. Respondent Butcher & Company, Inc. is liable and shall pay to the Claimant DBL Liquidating Trust simple interest at the rate of 9% per annum from March 21, 1988 to the date of payment of the award.
3. The Claimant's request for attorney's fees is denied.
4. The parties shall bear their respective costs.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant DBL Liquidating Trust shall be retained by the NASD, Inc.

AFFIRMATION

I, **GINA M. SALERNO**, 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: November 4, 1993

STATE OF: *New Jersey*

SS:

COUNTY OF: *Bergen*

On this 16th day of October 1997, before me personally appeared Gina M. Salerno to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Frank M. Allen

FRANK M. ALLEN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 19, 1999