

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

People's Securities, Inc.

vs.

Case # 92-04264

Name of Respondent

Paul A. Spinnato

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**REPRESENTATION**

For Claimant: William J. Wenzel, Esq. of Pullman & Conley, Bridgeport, Connecticut.

For Respondent: Kenneth A. Votre, Esq. of Sklarz Early & Avallone, New Haven Connecticut.

**CASE INFORMATION**

Statement of Claim filed: December 18, 1992.

Claimant's Submission Agreement signed on: December 21, 1992.

Claimant's Reply to Counterclaim filed on: March 2, 1993.

Statement of Answer and Counterclaim filed by Respondent Paul Spinnato on: February 23, 1993.

Respondent did not file a submission agreement as required by the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Dates/Sessions:

January 6, 1994

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2 sessions

Hearing Location: NASD offices located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that on September 29, 1992, Respondent telephoned Claimant representing he had 1,000 shares of Century Medicorp stock and ordered Respondent to sell it, whereby Claimant executed the sale. Claimant further alleged that on October 1, 1992 Respondent delivered a certificate for 1000 shares of Century and on October 6 Claimant delivered a check of \$27,364.00 to Respondent representing proceeds less commissions for the sale. Claimant contended that on October 15, 1992 it was informed that the shares delivered were the equivalent of 200 shares of Century Medicorp due to a 1 for 5 reverse split which occurred in 1990, thus the shares delivered by Claimant had a market value of \$5,500.00. Claimant further alleged that on October 15, 1992 subsequent to Respondent's order of the sale, Century Medicorp merged with Foundation Health Corp. and in order to meet its obligation to cover shares sold by Respondent on October 16, 1992 Claimant purchased 640 shares sold by Respondent on October 16, 1992. Claimant purchased 640 shares of Foundation Health for \$26,774.28, the equivalent of 800 shares of Century Medicorp. Claimant contended that on October 15, 1992 Claimant requested return of the amount paid in excess of the value of shares actually delivered, whereby, Respondent refused claiming broker error.

Respondent maintained that when he telephoned Claimant's representative he read the stock information directly from his stock certificate and Claimant's representative did not ask what dates the shares were issued nor any question relating to any identifying numbers on said shares. Respondent further maintained that had Respondent been so informed of the alleged reverse split, he would not have traded the shares. Respondent maintained that the stock certificate was accepted by Claimant and at no time was Respondent questioned as to the date of the certificate nor was he told that a reverse split had occurred. Respondent further maintained that the transaction was fully and finally settled on October 9, 1992 and a settlement statement was issued and neither Claimant nor Respondent objected to that statement. Respondent alleged in a counterclaim that Claimant breached its obligation to Respondent in executing the sale and providing him with requested information. Respondent further alleged that Claimant negligently and in breach of the applicable standard of care failed to provide Respondent with accurate information and failed to promptly inform Respondent of the problem with his shares. Respondent further alleged Claimant failed to act in good faith and failed to mitigate damages which caused Respondent to be financially damaged.

Claimant maintained in its reply to the counterclaim that Claimant is a discount brokerage firm and it provided Respondent only that information requested by Respondent with regard to trading price or activity on this issue. Claimant further denied any duty to Respondent to advise him with information as to the securities owed.

**RELIEF REQUESTED**

Claimant requested: \$26,774.28 plus interest, attorneys fees, and costs, and all counterclaims be dismissed.

Respondent requested: all claims be dismissed plus \$30,000.00 representing lost profits, attorneys fees and costs.

**AWARD**

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

1. Respondent Paul Spinatto be and hereby is liable and shall pay to Claimant People's Securities the sum of \$24,000.00 plus interest of 8% for 15 months for a sum of \$2,400.00 for a total of \$26,400.00.
2. Each party shall bear their own costs.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions x \$300.00 = \$600.00 less \$550.00 hearing session deposit = \$50.00 net due.

Respondent Paul Spinnato be and hereby is liable and shall pay the NASD the sum of \$50.00 to represent forum fees.

The NASD shall retain the \$500 filing fee and \$300 hearing session deposit filed by Claimant and the \$200.00 filing fee and \$250.00 hearing session deposit paid by Respondent.

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

CONCURRING ARBITRATORS' SIGNATURE

Melvin Lyon  
Melvin Lyon

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George Sommerfeld

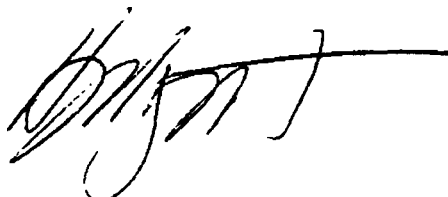
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Vera L. Wolf

Date of Decision: February 9, 1994

STATE OF: N.J.

COUNTY OF: Passaic ss:

On this 31<sup>st</sup> day Jan., 1994, before me personally appeared Melvin Lyon known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



HENRY NAGELHOUT  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES FEBRUARY 1, 1996