

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Joseph O. and Marquerite Lampe

92-04267

Names of Respondents

Biltmore Equities & Securities, Ltd
Mark P. Malenfant
William R. Hecht
Kyle Hecht

REPRESENTATION

Claimants, Joseph and Marquerite Lampe were represented by Joseph M. Huey, Esq. of Brandes, Lane & Joffe, P.C., Phoenix, Arizona.

Respondent, Mark Malenfant appeared pro se.

Respondent, William Hecht appeared pro se.

Respondent, Biltmore Equities and Securities, Ltd. did not enter an appearance.

Respondent, Kyle Hecht refused to submit to the jurisdiction of the NASD.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on December 21, 1992.

Claimants, Joseph and Marquerite Lampe's Submission Agreement was signed on December 18, 1992.

The Statement of Answer was filed with the NASD by Respondent, William R. Hecht on or about March 10, 1992.

Respondent, William R. Hecht's Submission Agreement was signed on March 10, 1992.

Respondents, Biltmore Equities and Securities, Ltd. and Mark Malenfant did not file answers to the Statement of Claim or executed Submission Agreements with the NASD.

Respondent, Kyle Hecht declined to submit to the jurisdiction of the NASD Arbitration Forum.

HEARING INFORMATION

The Hearing took place on June 17, 1993 for one (1) hearing session and on August 11, 1993 for one (1) hearing session.

The Hearing Location was Scottsdale, Arizona.

CASE SUMMARY

Claimants, Joseph and Marquerite Lampe ("the Lampes") alleged fraud and racketeering against Respondents, Biltmore Equities and Securities, Ltd., ("Biltmore"), Mark P. Malenfant ("Malenfant") William Hecht ("W. Hecht") and Kyle Hecht ("K. Hecht") in connection with the solicitation to purchase two thousand shares of stock in Texscan Corporation ("Texscan"). The Lampes alleged that the representations made to them by Respondents were false and materially important in their decision to purchase stock in Texscan. In addition, the Lampes asserted that Malenfant was engaged in the manipulation of the stock price of Texscan and the actions of the Respondents constituted a scheme to defraud the Lampes.

Respondent, W. Hecht alleged that the stock in Texscan was suitable for the Lampes given their net worth and that the stock of Texscan was not manipulated by either Biltmore or Malenfant. In addition, W. Hecht asserted that Mr. Lampe continued to do business with him when had changed brokerage firms.

Respondents, Malenfant and Biltmore failed to answer the Statement of Claim.

RELIEF REQUESTED

The Lampes requested \$13, 657.14 plus interest from June 27, 1991 and treble damages under A.R.S. Section 13-2301 et seq.

W. Hecht requested dismissal of the claim.

Malenfant and Biltmore did not file answers with affirmative relief requests.

OTHER ISSUES CONSIDERED & DECIDED

K. Hecht refused to submit to the jurisdiction of the NASD for purposes of this arbitration because she was not an associated person and was not required to submit to jurisdiction. She was therefore removed as a party respondent.

The arbitration panel determined that there was jurisdiction over Malenfant and Biltmore. Malenfant appeared at the first hearing on June 17, 1993 and failed to appear on the continuation date of August 11, 1993. Biltmore was found by the panel to have been served with notice of the claim, hearing date, arbitrator information and hearing location by the NASD in accordance with Sections 25 and 26 of the NASD Code of Arbitration Procedure ("NASD Code"). In addition, Biltmore and Malenfant were obligated to submit to the jurisdiction of the NASD pursuant to Section 12 of the NASD Code.

The parties who appeared at the hearing 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 NASD.

AWARD

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 panel denies Claimant's Motion to include Respondent, Malenfant's Stipulation to Judgment on the record;
2. With respect to Respondent, William Hecht, the panel determined that Claimant's Statement of Claim and presentation of evidence failed to state a claim as against W. Hecht and the claim against W. Hecht is therefore denied and dismissed on all counts;
3. With respect to Respondent, Biltmore, the panel after finding proper jurisdiction over this respondent also enters a default judgment as to Biltmore. The panel also finds, however, that Claimant's Statement of Claim and

presentation of evidence failed to substantiate the allegation of stock price manipulation or damages as against Biltmore. Therefore, the panel awards no damages on any count to Claimants from Biltmore;

4. With respect to Respondent, Malenfant, the panel enters a default judgment for the following reasons:

- a.) Malenfant failed to appear at the continuation of the hearing on August 11, 1993;
- b.) Malenfant failed to pay to the NASD the ordered adjournment fee of \$500.00 pursuant to Section 30 of the NASD Code; and,
- c.) Malenfant failed to supply Claimant with documents by the July 19, 1993 deadline ordered by the panel on the adjournment of the hearing at his request on June 17, 1993.

The panel finds, however, that the Claimant's Statement of Claim and presentation of evidence failed to substantiate allegations of stock price manipulation or damages as against Malenfant. Therefore, the panel awards no damages on any count to Claimants from Malenfant; and,

5. Other than Forum Fees which are addressed below, the parties shall each bear their own expenses, costs and attorney's fees incurred in this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$150.00 non refundable claim filing fee and the \$500.00 hearing session deposit paid to the NASD by the Lampes. Malenfant is assessed and shall pay to the NASD additional Forum Fees in the amount of \$500.00. In addition, Malenfant shall pay to the NASD the \$500.00 postponement fee previously assessed on June 17, 1993.

Forum Fees were calculated at the rate of \$500.00 per hearing session for two (2) hearing sessions. Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

/S/ Gregory W. Dawson
Gregory W. Dawson, Esq
Presiding Chairperson
Public Arbitrator

September 10, 1993
Dated

/S/ Andrew S. Hendricks
Andrew S. Hendricks, Esq.
Panelist
Public Arbitrator

September 8, 1993
Dated

/S/ Charles C. DeMoss
Charles C. DeMoss
Panelist
Industry Arbitrator

September 7, 1993
Dated

Date award served on the parties: October 4, 1993