

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Motoshi Yamasaki

93-00661

Name of Respondents

D.H. Blair & Company  
Craig Nilsen  
David J. Yorwerth

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1993, Claimant Motoshi Yamasaki, who appeared Pro Se, alleged that Respondents Craig Nilsen and David J. Yorwerth of the Respondent firm D.H. Blair & Co., Inc. misled him into purchasing shares of a stock known as Vital Heart Systems Company, and that they convinced him to purchase the stock by glorifying the potential profits alone and deliberately hiding the information about high risks involved with this stock. The Claimant further alleged that the Respondents did not meet "full disclosure requirements", and that he would not have invested in this stock if he had been informed of the risks, and therefore, the Respondents should be held liable for the loss he has incurred.

Respondent David J. Yorwerth, who appeared Pro Se, maintained that on August 6, 1992 Respondent Craig Nilsen solicited a trade from the Claimant, and on September 17, 1992 a second trade was solicited, and, at the time, a prospectus was sent to the Claimant. Respondent Yorwerth also maintained that the Claimant was never misled by either Respondent Nilsen or himself, and that he could have sold the stock when he received the prospectus if he felt it was not a good trade.

Respondents D.H. Blair & Co., Inc. and Craig Nilsen, in a joint Statement of Answer, through their in-house counsel, William Badinelli, maintained that the Claimant acknowledged that he received and read the prospectus, and that the Claimant paid for the second purchase, and held the shares of Vital Heart, indicating he wanted to keep the stock. The Respondents also maintained that the Claimant made an informed investment decision which did not work out as

anticipated and now seeks to hold the Respondents liable. Respondents D.H. Blair & Co., Inc. and Craig Nilsen contended that the Claimant still owns the stock in question, has suffered an unrealized loss, and is not entitled to recover any losses in this matter.

### **RELIEF REQUESTED**

Claimant Motoshi Yamasaki requested \$3,942.50 in actual damages, plus return of the NASD filing fee.

Respondent David Yorwerth requested that the claims against him be dismissed.

Respondents D.H. Blair & Co., Inc. and Craig Nilsen requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edgar Bellinger, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 26, 1993, by the Respondents D.H. Blair & Co., Inc. and Craig Nilsen on July 1, 1993, but not signed by Respondent David Yorwerth as required under Sections 12 & 13 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. Respondents D.H. Blair & Co., Inc. and Craig Nilsen are jointly and severally liable and shall pay \$2,500.00 in actual damages to Claimant Motoshi Yamasaki.
2. Respondents D.H. Blair & Co., Inc. and David Yorwerth are jointly and severally liable and shall pay \$1,500.00 to Claimant Motoshi Yamasaki in actual damages.
3. Respondent D.H. Blair & Co., Inc. is liable and shall pay to Claimant Motoshi Yamasaki simple interest at the rate of 8% from August 6, 1992 to the date of payment of the Award.

4. Respondent D.H. Blair & Co., Inc. shall sell the 2,000 shares of Vital Heart Systems, Inc. stock from the Claimant's account; the proceeds of this sale are to be credited to the Claimant, thus reducing the respective amount of damages awarded against Respondents D.H. Blair & Co., Inc, Craig Nilsen and David Yorwerth in pro rata proportion.
5. The parties shall bear their respective costs.
6. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent D.H. Blair & Co., Inc. is liable and shall pay \$125.00 to the Claimant as reimbursement.

**AFFIRMATION**

I, **EDGAR BELLINGER, ESQ.**, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:**      January 19, 1994