

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

De T. and Lynn H.L. Sheng

93-00822

Name of Respondents

Biltmore Securities, Inc.
Brian G. Kulungian

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 5, 1993, Claimants De T. and Lynn H. L. Sheng, who appeared Pro Se, alleged that on or about April 1, 1992 after reviewing appropriate information provided by Respondent Brian G. Kulungian, Claimants purchased 100 shares of Glaxo Holdings through Respondent Biltmore Securities, Inc. Claimants further alleged that on or about May 11, 1992 Respondent Brian G. Kulungian phoned urging Claimants to purchase 500 shares of DVI Health immediately based on the representations that DVI Health would move from over-the-counter to New York Stock Exchange, the next day and Mr. Pritzker, the owner of Hyatt Hotel is the owner of DVI Health. Claimants contended that because of the time pressure, Claimants purchased 500 shares of DVI Health at \$12.00 a share with Respondent Brian G. Kulungian's promise to provide written information at a later date. Claimants further contended that they waited but did not receive anything on DVI Health and every time they phoned Respondent Brian G. Kulungian, he was busy, at which time, Claimants would leave messages but Respondent Brian G. Kulungian never returned their calls, and when he finally did, he promised to send all information not only on DVI Health but on other stocks as well. Claimants asserted that they decided to write a letter to Mr. Richard Bronson, President of Respondent Biltmore Securities, Inc. to complain about Respondent Brian G. Kulungian and to request restitution on DVI Health as they realized it was a waste of time to wait the stock price of DVI was plunging from \$12 to \$7 1/2. Claimants further asserted that Mr. David J. Woodruff, Compliance Manager of Respondent Biltmore Securities, Inc. responded to their complaint whereby it's stated that Respondent Brian G. Kulungian "had provided with an adequate and accurate amount of detail about the company" and Respondent Brian G. Kulungian was "extremely busy...difficult to respond to a client's call right away" ...[they] should have contacted Respondent Brian G. Kulungian's supervisor or BSI Compliance

Department sooner than three months after the trade." Claimants further alleged that totally unsatisfied with Mr. Bronson's response, they wrote to Mr. Bronson again, requesting immediate releasing of written information on DVI Health and expressing their discontent with Mr. Woodruff. Claimants further contended that on or about September 3, 1992, Mr. Woodruff wrote again and rushed a stack of written information on DVI Health whereby Claimants reviewed the material and still could not verify the information which Respondent Brian G. Kulungian used to get them to purchase the stock. Claimants further asserted that realizing that both Respondent Brian G. Kulungian and Mr. Woodruff tried to conceal the important information of issuing 1,525,000 new stocks by DVI Health on May 14, 1992, at which time, Claimants wrote to Ms. Linda Sparrow at the SEC to complain about Respondent Biltmore Securities, Inc. whereby she advised Claimants that the SEC requested Respondent Biltmore Securities, Inc. to provide a report of their findings with a copy to Claimants; however, Claimants did not receive a copy of the report. Claimants further alleged that because of the intentional deceptive acts of Respondents Biltmore Securities, Inc. and Brian G. Kulungian caused Claimants to sustain financial loss, thus they should be liable.

Respondents Biltmore Securities, Inc. and Brian G. Kulungian by and through their counsel, Hartley T. Bernstein of Bernstein & Wasserman, New York, NY, maintained that they deny each of the substantive allegations contained in the Statement of Claim. Respondents further maintained that the Claimants acknowledge they are experienced and sophisticated investors who accumulated "some knowledge about SEC rules and regulations through actual investing" in the stock market for well over 15 years. Respondents contended that at the time Claimant De T. Sheng opened Claimants account at Respondent Biltmore Securities, Inc., Claimant De T. Sheng displayed this sophistication and indicated that he wished to engage in speculative investments, had a net worth of approximately \$500,000 and annual income of approximately \$50,000.00. Respondents further contended that with this background, Claimants thoughtfully and deliberately considered, analyzed and entered each transaction for their account at Respondent Biltmore Securities, Inc. Respondents asserted that Claimants opened their account in April, 1992 with a purchase of Glaxo Holdings and thereafter they spoke regularly with their broker Respondent Brian G. Kulungian whereby in May, 1992, Respondent Brian G. Kulungian recommended the purchase of shares of DVI Health Services Corp. ("DVI"), at which time, Respondent Brian G. Kulungian explained that DVI, which was listed as over-the-counter, was expected to become listed on the New York Stock Exchange and he also provided Claimants with information and materials relating to DVI, including the fact that Jay Pulzter was a significant investor in that company. Respondents further asserted that after considering and reviewing this information, Claimants placed an order to purchase 500 shares of DVI Health at \$12.00 a share. Respondents further maintained that contrary to Claimants statement, Respondent Brian G. Kulungian returned his customer's telephone calls and provided extensive information on DVI as it became available whereby after the price of DVI decreased, Claimants attempted to rescind the trade and avoid losses. Respondents further contended that at no time did Respondents Biltmore Securities, Inc. and Brian G. Kulungian conceal any information or provide any misleading information relating to DVI, thus the claim should be dismissed.

RELIEF REQUESTED

Claimants De T. and Lynn H.L. Sheng requested the sum of \$6,015.00 in actual damages and in return they will release the 500 shares of DVI stocks to Respondent Biltmore Securities, Inc.

Respondents Biltmore Securities, Inc. and Brian G. Kulungian requested the claim be dismissed.

AWARD

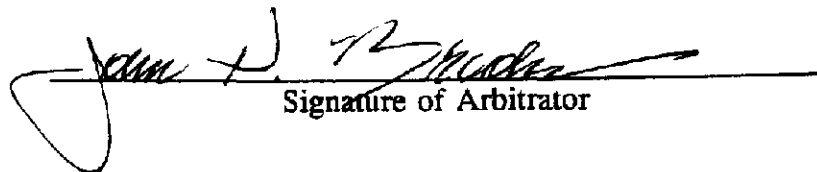
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John P. Brooks, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 29, 1993 and by the Respondent on April 19, 1993.

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. The claim of Claimants De T. and Lynn H.L. Sheng against Respondents Biltmore Securities, Inc. and Brian G. Kulungian is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants De T. and Lynn H.L. Sheng shall be retained by the NASD, Inc.

AFFIRMATION

I, JOHN P. BROOKS, 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: March 2, 1994