

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s):

Roger Presburger

NASD Arbitration  
No. 93-02233

Name of Respondent(s)

Clayton Securities Services, Inc.  
Smyth Securities, Inc.

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REPRESENTATION

For Claimant: Roger Presburger, Calabasas, California

For Respondent Clayton Securities Services, Inc.: Mark Diemer,  
Clayton Securities Services, Inc., Clayton, Missouri

For Respondent Smyth Securities, Inc.: John S. Weiss, Emeric  
Financial, Fairfield, Iowa

CASE INFORMATION

Statement of Claim filed: June 4, 1993

Claimant's Submission Agreement signed: July 8, 1993 and November  
10, 1993

Statement of Answer and Motion to Dismiss filed by Respondent  
Clayton Securities Services, Inc.: October 1, 1993

Statement of Answer filed by Respondent Smyth Securities, Inc.:  
January 3, 1994

Respondent Smyth Securities, Inc.'s Submission Agreement signed:  
January 3, 1994

Respondent Clayton Securities Services, Inc. did not file a  
Submission Agreement but appeared at the hearing and is subject to  
National Association of Securities Dealers, Inc. (NASD) jurisdiction  
in accordance with Section 12 of the NASD Code of Arbitration  
Procedure.

### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None  
Hearing Date(s)/Session(s): April 21, 1994 (one session)  
Hearing Location: Torrance, California

### CASE SUMMARY

Claimant alleged that Respondents failed to follow Claimant's instructions regarding the purchase of 2500 shares of Imperial Credit Industries Inc. stock. Claimant further alleged that Smyth Securities, Inc. incorrectly handled Claimant's account.

Respondent Clayton Securities, Inc. denied any liability to Claimant and asserted the following affirmative defenses: 1) Respondent acted in compliance with all applicable rules and regulations and acted in good faith and did not directly induce the alleged act or acts, if any, constituting the alleged violations of law; 2) the injuries, if any, alleged to have been sustained by Claimant, were caused, in whole or in part, by the conduct of the Claimant and his representatives Smyth Securities, Inc. and Resources Trust Company; 3) the transaction complained of in Claimant's Claim was duly authorized by Claimant, who, at all times, was in sole control of the assets in his account; and 4) the injuries, if any, alleged to have been sustained by Claimant, were caused, in whole or in part, by the Claimant's failure to mitigate his damages.

John Weiss, on behalf of Respondent Smyth Securities, Inc., denied any liability to Claimant and alleged that as Claimant's broker he handled the transaction in dispute correctly. Mr. Weiss further alleged that he cannot be held responsible for the settlement of the transaction in dispute.

### RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$11,250.00;
2. Attorney's fees in the amount of \$2,500.00; and
3. Punitive damages in the amount of \$1,875.00.

Respondent Clayton Securities Services, Inc. requested dismissal of Claimant's claims.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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. Respondent Clayton Securities Services, Inc. is solely liable for and shall pay to Claimant the sum of \$11,250.00 in compensatory damages.
2. Respondent Clayton Securities Services, Inc. is solely liable for and shall pay to Claimant the sum of \$1,800.00 in interest.
3. All claims by Claimant against Respondent Smyth Securities, Inc. are dismissed.
4. Claimant's claim for punitive damages is denied.
5. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$400.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against: Respondent Clayton Securities Services, Inc., solely, in the amount of \$400.00, calculated as follows: One hearing session times \$400.00/session.

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

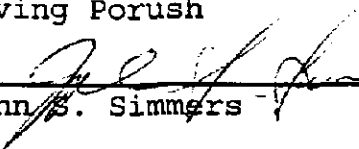
#### ARBITRATORS

Name	Public / Industry
Sandra L. Malek, Esq.	Public Arbitrator
Irving Porush	Public Arbitrator
John S. Simmers	Industry Arbitrator

Concurring Arbitrators' Signatures

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Sandra L. Malek, Esq.

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Irving Porush

  
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John S. Simmers

Date of Decision: \_\_\_\_\_