

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Biltmore Securities, Inc.

93-02367

Name of Respondents

Gabriel Construction
Gabriel Oladeinde

REPRESENTATION

Claimant Biltmore Securities ("Biltmore") was represented at the hearing by Marc J. Ross, Esq. of Bernstein & Wasserman of New York, New York.

Respondents Gabriel Construction ("Gabriel Construction") and Gabriel Oladeinde ("Oladeinde") did not appear at the hearing. (See "Other Issues").

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant Biltmore on June 14, 1993. The Uniform Submission Agreement was signed by Linda S. Carsten, Vice President/Chief Operating Officer, on behalf of Biltmore on April 2, 1993.

A statement of answer and Counterclaim was filed with the NASD by Respondents Gabriel Construction and Oladeinde on July 2, 1993. The Respondents did not execute a Uniform Submission Agreement. (See Other Issues).

A Reply to Respondents' Counterclaim was filed with the NASD by Claimant Biltmore on August 31, 1993.

HEARING INFORMATION

The hearing was held on April 26, 1995, at the Omni Inner Harbor Hotel in Baltimore, Maryland for a total of one (1) hearing session.

CASE SUMMARY

Claimant Biltmore stated in its Statement of Claim that on February 4, 1993, Respondent Oladeinde opened an account with Biltmore on behalf of Respondent Gabriel Construction with Alexander Barletta ("Barletta"), a registered representative of Biltmore. Claimant alleged that Oladeinde represented to Barletta that Gabriel Construction had an approximate net worth of \$2,000,000 and was interested in pursuing investments for growth and speculation. Biltmore alleged that upon opening the account, Oladeinde placed an order to purchase 2,000 shares of Warner Lambert Co. (Warner Lambert") at a net price of \$132,090, which purchase was confirmed and acknowledged by Oladeinde by letter dated February 5, 1993. Biltmore alleged that Oladeinde tendered a check dated February 9, 1993 in the amount of \$132,090 to Biltmore's clearing broker, Bear Stearns, in payment for the Warner Lambert purchase. Biltmore alleged that on February 10, 1993, Oladeinde sold 1,000 shares of the Warner Lambert stock for a net proceeds of \$65,757.80, and purchased 10,000 shares of Harmony Holdings, Inc. ("Harmony") for a total purchase price of \$66,265.00. Biltmore further alleged that: on February 11, 1993 Oladeinde sold the remaining 1,000 shares of Warner Lambert for total proceeds of \$66,882.76; on February 12, 1993, Oladeinde directed Barletta to purchase an additional 25,000 shares of Harmony Holdings for a total purchase price of \$162,515.00; and on February 16, 1993 Oladeinde placed an order to purchase an additional 10,000 shares of Harmony for a total cost of \$62,515.00. Biltmore alleged that on February 18, 1993 it was advised by its bank that the \$132,090 check tendered by Gabriel Construction had been returned for insufficient funds because the account upon which it had been drawn had been closed. Biltmore alleged that it contacted Oladeinde who assured them that replacement funds would be immediately forthcoming. Biltmore further alleged that Oladeinde assured Biltmore and Barletta on a daily basis that payment would be forthcoming, and that Oladeinde requested and Biltmore provided wire instructions so that funds could be wired to Bear Stearns. Biltmore alleged that on or about February 19, 1993, Oladeinde faxed a letter to Biltmore confirming that Gabriel Construction had directed its bank to transfer funds to Bear Stearns, and instructed Biltmore to sell the shares of Harmony stock owned by Gabriel Construction. Biltmore stated that the Harmony shares were sold on or about February 23, 1993, and that no additional funds have been received from Respondents, leaving an unsecured debit balance in the account of \$50,696. Biltmore alleged that Gabriel Construction is in breach of its contractual obligations and is indebted to Biltmore in the amount of \$50,696 plus interest.

Respondents in their Answer and Counterclaim stated that on or about February 4, 1993, Barletta called Gabriel Construction regarding the purchase of Warner Lambert. Respondents further stated that on February 5, 1993, Oladeinde confirmed and acknowledged the purchase and instructed Claimant to sell the shares when they were trading at \$67 per share. Respondents also stated that on February 9, 1993, a check was written to Biltmore in the amount of \$132,092 for the purchase. Respondents stated that on February 18, 1993, Warner Lambert was trading at \$67 per share. Respondents further stated that on February 18, 1993, Biltmore advised Gabriel Construction that the check was returned, and that thereafter Respondents made all efforts to transfer funds from overseas, but due to the political situation the bank could not respond to their request on demand. Respondents denied all other allegations of wrongdoing alleged in the Statement of Claim, and

requested judgement in the amount of \$1,808.00.

Claimant Biltmore in its Reply to Respondents' Counterclaim, denied each and every allegation contained in the Counterclaim, stated that Gabriel Construction directed the 2,000 share purchase of Warner Lambert, reasserted the allegations contained in the Statement of Claim, and requested that the Counterclaim be dismissed.

RELIEF REQUESTED

Claimant requested damages in the amount of \$50,696 plus interest, punitive damages, reasonable attorney fees, dismissal of Respondents' counterclaim, and such other relief deemed just and proper.

Respondents Gabriel Construction and Oladeinde requested a judgement in the amount of \$1,808.00.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the panel determined that Respondents Gabriel Construction and Oladeinde had received due notice of the hearing as required under Section 26 of the Code; however, the Panel did not believe it had the authority to exercise its jurisdiction over Respondents.

The Panel noted that Respondents Gabriel Construction and Oladeinde did not file with the NASD a properly executed submission to arbitration and the Panel determined that they were without proof that Respondents had signed an account opening document or any other agreement requiring Respondents to arbitrate any dispute, claim or controversy with Claimant. The Panel in an Order (See Attachment A) provided Claimant until June 1, 1995 with an opportunity to file such documentation. When no such documentation was received, the Panel directed the NASD to contact Claimant and to provide Claimant's until June 16, 1995 to respond to the Panel's Order. Claimant has not filed a response to the Panel's Order.

The Claimant at the hearing agreed that the Panel may sign and will accept counterpart copies of the Award.

AWARD

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

1. The Statement of Claim filed by Claimant Biltmore Securities, Inc., is hereby dismissed without prejudice pursuant to Section 16 of the NASD Code of Arbitration Procedure. The parties are referred to their other remedies provided by applicable law.

2. Although Respondents did file a counterclaim against Claimant, the counterclaim was not accepted by this Panel as the requisite filing fee was never deposited by Respondents.
3. Any relief not specifically provided for herein is denied.

FORUM FEES and OTHER FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees and Other Fees are assessed:

1 hearing session x \$750 = \$750.

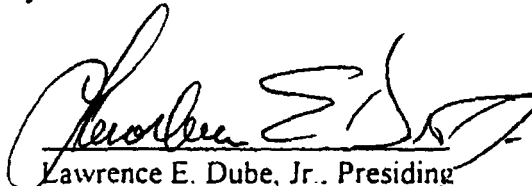
2 postponement fees deposited by the Claimant = \$1,500

Pursuant to Section 43(c) of the Code, the NASD shall retain the hearing session deposit in the amount of \$750, and shall retain one of the two postponement fees deposited by Claimant so that the amount refunded to the Claimant is \$750.

By The Arbitration Panel:

Dated:

7/21/95


Lawrence E. Dube, Jr., Presiding
Public Arbitrator

William H. Murphy, Sr.
Public Arbitrator

Daniel Donovan, Esq.
Industry Arbitrator

Date Award Served By the NASD:

August 4, 1995

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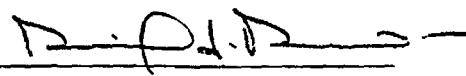
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