

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William & Dorothy Lucke

93-03444

Name of Respondents

D.H. Blair & Company
Mark Guidice

REPRESENTATION

For Claimant William and Dorothy Lucke ("Claimants"): Russell L. Forkey,
Attorney at Law, Deerfield Beach, Florida.

For Respondent D.H. Blair & Company ("D.H. Blair"): Justin Y.K. Chu, Esq.
of the law firm of Pollack & Kaminsky, New York, New York.

For Respondent Mark Guidice ("Guidice"): Philip Raible, Esq. and Melissa
Georges, Esq. of the law firm of Squandron, Ellenoff, Plesent, Sheinfeld &
Sorkin, New York, New York.

CASE INFORMATION

Statement of Claim filed: August 31, 1993
Claimant William Lucke ("Mr. Lucke") Submission Agreement signed on:
August 23, 1993.
Claimants William and Dorothy Luckes' Submission Agreement signed on:
September 29, 1993

Statement of Answer filed by D.H. Blair on: December 20, 1993
D.H. Blair's Submission Agreement signed on: November 10, 1993

Statement of Answer filed by Mark Guidice on: December 20, 1993
Guidice Submission Agreement signed on: December 10, 1993

HEARING INFORMATION

Hearing Dates/Sessions: September 22, 1994 - two sessions
September 23, 1994 - two sessions
Hearing Location: Omni Inner Harbor Hotel, Baltimore, Maryland

CASE SUMMARY

The causes of action alleged by Claimants were fraud and deceit, negligence, breach of fiduciary duty, breach of contract and as it relates to D.H. Blair, negligent supervision and fraudulent marketing. Claimants alleged, among other things, that Guidice made material misrepresentations to induce the Claimants to be clients of Respondents and that Guidice made material misrepresentations to Claimants to purchase stocks in companies recommended by Guidice. Claimants alleged that Guidice neither disclosed the risks related to such investments nor did he follow Claimants stated investment objective of income and preservation of capital. Claimants alleged the claims of unsuitability and churning. Claimants alleged that Guidice used improper hard sell tactics to place Claimants into extremely risky new companies that had no fundamental value. Furthermore, Claimants alleged that Respondents improperly used their hard sell approach to have Mr. Lucke cumulate a substantial position of a newly formed company that traded only 2000 shares a day.

Respondents categorically denied all allegations of wrongdoing asserted by the Claimants. Respondents maintained, among other things, that Mr. Lucke was a sophisticated investor who was fully aware of the risks related to the speculative investments that he invested in. Respondents maintained that Claimants were given and that Mr. Lucke read the prospectus on each company before making a decision to purchase or sell securities.

RELIEF REQUESTED

Claimants requested damages in the amount of \$79,533.41; prejudgment interest at the legal rate through the date of the judgment, reasonable attorney's fees; punitive damages in the amount of \$100,000; and, the costs of this proceeding.

Respondent D.H. Blair requested (i) the dismissal of Claimants' claim, (ii) an award to D.H. Blair for the costs and disbursements in defending this claim,

and (iii) an award to it for such other costs, including attorneys' fees.

Respondent Guidice requested that Claimants' claim be dismissed, that he be awarded his costs and disbursements and that he be awarded attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimants first renewed their September 13, 1994 motion that the full panel review the decision of the Chair with respect to her May 27, 1994 denial in part of Claimants' motion to compel discovery. Respondents asserted that Claimants' motion was untimely, because it was made more than 3 1/2 months after the denial. Furthermore, Respondents asserted that the May 27, 1994 decision was based on a review of extensive briefs filed by all parties. The panel decided not to review the earlier decision. Accordingly, Claimants' motion was denied.

Claimants also requested that several New York witnesses be allowed to testify via telephone conference. Respondents did not object to the method of testifying but was concerned over the number of witnesses that would testify by this method. Claimants had one witness testify over telephone.

At the end of Claimants' case, Respondents asked for a directed verdict based on Claimants' failure to demonstrate in their case in chief that Respondents were liable for damages.

The parties 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.

FINDINGS OF FACT

(The following findings are based on statements made by Mr. Lucke under oath.)

Mr. Lucke, who made all the investment decisions for Claimants, was 72 at the time the brokerage account with Respondents was opened. Mr. Lucke, while experienced in the stock market, was not experienced with purchasing the extremely risky securities of newly formed companies that were thinly traded.

However, Mr. Lucke was a sophisticated investor who not only read the prospectus that Respondents gave him for each and every company he purchased, but also researched each security. Mr. Lucke researched the companies in the SEC reading room and read various financial magazines and newspapers.

While it is unclear as to the total asset position of Mr. Lucke, he has a yearly pension and social security payments of \$89,670 and was earning \$20,000 a year in consulting fees as an engineer when he opened his account.

Mr. Lucke was disappointed with the advice he received from other brokerage houses and had moved his investments to Charles Schwab. He then met Mark Guidice, a broker with D.H. Blair. Mr. Lucke was frustrated at not having earned more on his investments and decided to invest in the more speculative new issues based on Guidice's advice. Mr. Lucke was aware that the larger the possibility for quick growth meant an equal possibility for a large loss. Guidice made it clear that Mr. Lucke could not transfer the stocks held on his Schwab account because accounts at D.H. Blair only held newly issued securities.

Claimants' account with Respondents grew substantially both in investments dollars (just under \$80,000) and in profits (account worth \$100,00, at one time) for approximately a year and a half. Then the market for the three securities (Management Co. Entertainment Group, Legends Company of Chicago, Inc. and Pure Tech International Inc.) began to plummet. Two of the companies (Management Co. Entertainment Group and Legends Company of Chicago, Inc.) became worthless.

Claimants at no time (prior to the filing of this action) complained to anyone at D.H. Blair about the transactions. Mr. Lucke was well aware at the time of his purchases of Management Co. Entertainment Group that selling off his large position would depress the price for the thinly traded stock.

AWARD

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

1. Mr. Lucke is a sophisticated investor who willingly took on the high risks of his investments with Respondents. No evidence was submitted to

Lucke Decision
Case No. 93-03444
Page 5

demonstrate any churning or other wrongdoing by the Respondents. Therefore Respondents motion for a directed verdict is granted.

2. That the parties shall bear their respective costs, including attorneys' fees, except as specifically stated below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 hearing sessions X \$750 = \$3,000

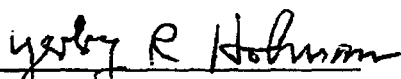
Forum Fees Assessed Against: Claimants and Respondents equally. Claimants are assessed forum fees in the amount of \$1,500. Claimants, however, may offset this amount with their hearing session fee of \$750 previously deposited so that the amount due from the Claimants is \$750. Respondents D.H. Blair and Guidice are jointly and severally assessed forum fees in the amount of \$1,500.

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

Concurring Arbitrator's Signature

Name

Public/Industry


Yervy R. Holman

oct 21, 1994

NASD Date of Decision: October 26, 1994

Lucke Decision
Case No. 93-03444
Page 5

demonstrate any churning or other wrongdoing by the Respondents. Therefore Respondents motion for a directed verdict is granted.

2. That the parties shall bear their respective costs, including attorneys' fees, except as specifically stated below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 hearing sessions X \$750 = \$3,000

Forum Fees Assessed Against: Claimants and Respondents equally. Claimants are assessed forum fees in the amount of \$1,500. Claimants, however, may offset this amount with their hearing session fee of \$750 previously deposited so that the amount due from the Claimants is \$750. Respondents D.H. Blair and Guidice are jointly and severally assessed forum fees in the amount of \$1,500.

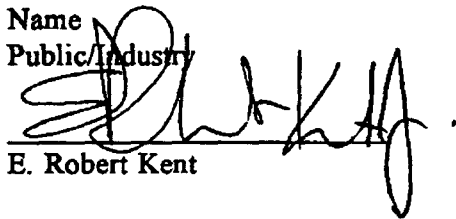
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

Public/Industry

E. Robert Kent



10/25/94

NASD Date of Decision: October 26, 1994

demonstrate any churning or other wrongdoing by the Respondents. Therefore Respondents motion for a directed verdict is granted.

2. That the parties shall bear their respective costs, including attorneys' fees, except as specifically stated below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 hearing sessions X \$750 = \$3,000

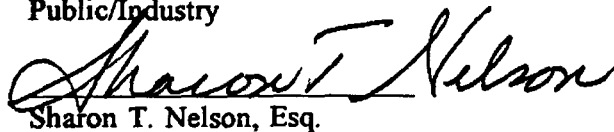
Forum Fees Assessed Against: Claimants and Respondents equally. Claimants are assessed forum fees in the amount of \$1,500. Claimants, however, may offset this amount with their hearing session fee of \$750 previously deposited so that the amount due from the Claimants is \$750. Respondents D.H. Blair and Guidice are jointly and severally assessed forum fees in the amount of \$1,500.

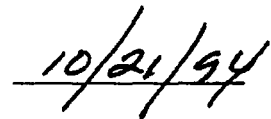
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

Public/Industry


Sharon T. Nelson, Esq.



NASD Date of Decision: October 26, 1994