

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the matter of the Arbitration Between

LAUREN S. SOLL,

Claimant,

v.

NASD No. 93-03478

ROSE SECURITIES CORPORATION,  
WILLIAM A. GOLDSMITH and  
ALAN S. BIRD

Respondents.

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***Representation***

For Claimant: Bruce Spear, Esq. of Herring, Spear & Loftus, San Diego, California

For Respondent: James L. Sanders, Esq. of Sheppard, Mullin, Richter & Hampton,  
Los Angeles, California

***Case Information***

Statement of Claim filed: August 30, 1993

Claimant's Submission Agreement signed: August 25, 1993

Statement of Answer filed on: November 10, 1993

Respondents' Submission Agreements signed on: October 19, 1993

***Hearing Information***

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: January 16, 1995/two, January 17, 1995/two

Hearing Location: San Diego, California

### *Case Summary*

Claimant alleged:

Failure to register Towers Financial Corporation (Towers) promissory notes, (Notes) misrepresentation, fraud, failure to qualify the Notes in accordance with California Corporations Code Section 25510, making false and misleading statements in violation of California Corporations Code 25401, breach of fiduciary duty and negligence in the sale of the Notes.

In late December 1992, Claimant (Soll) purchased \$75,000 of unregistered securities from Rose Securities Corp. (Rose) and William Goldsmith (Goldsmith). Soll purchased the Notes in reliance on false and misleading information. From February 15, 1989 through February 7, 1993, Towers was engaged in an unregistered offering and sale of securities, namely, over \$215 million in promissory notes. Neither the securities nor the transactions were ever registered under the Securities Act of 1933 or qualified under the California Corporations Securities Law of 1968. No exemption from registration or qualification was available.

Claimant opened a securities account with Rose and Goldsmith on November 12, 1992 and stated he was interested only in good quality securities. He was not employed and lived on his interest, therefore needed safe investments. Goldsmith recommended that Soll liquidate his entire investment in Government National Mortgage Association (GNMA) Certificates and purchase the Notes.

Respondents denied each and every allegation of wrongdoing in the Claim and alleged:

Rose was not aware of Towers' fraud, which was carried out without the knowledge of Rose. Respondent Rose also was not aware that there was any question concerning whether the Notes qualified for exemption from registration contained in Regulation D of the Securities Act of 1933. Rose received legal opinions from Towers' New York law firm confirming that the Notes could be sold in California pursuant to the Regulation D exemption.

In acting as a broker-dealer for the Towers' Notes, Rose complied with the requirement of Regulation D. It provided clients with information required by Regulation D and required its clients, including the Claimant, to fill out written documents to establish that they were accredited investors qualified for the exemption. Any fraud suffered by Claimant was as a result of the action of Towers.

### ***Relief Requested***

Claimant requested:

1. Rescission of his purchases of the Notes;
2. Compensatory damages in the sum of \$75,000, plus expenses and interest;
3. Punitive damages in the sum of \$425,000; and
4. Such further relief as the panel deems proper.

### ***Other Issues Considered and Decided***

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.

### ***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 Rose Securities Corporation, only, is liable for and shall pay Claimant Soll the sum of \$55,000;
2. All claims against Respondent Goldsmith and Bird are dismissed;
3. All other claims, including the claim for punitive damages is dismissed;
4. The parties shall each bear their respective attorney's fees;
5. The parties shall each bear their respective costs.

### ***Other Costs***

None.

### ***Forum Fees***

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$750 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondent Rose Securities for \$3,000,

calculated as follows: four hearing sessions at \$750/hearing session, equals \$3,000

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

*Concurring Arbitrators' Signatures*

Name

Harvey Flodin

Alexandra Linden

Monte Newman

Public / Industry

Public Arbitrator

Industry Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures



Harvey Flodin

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Alexandra Linden

\_\_\_\_\_  
Monte Newman

Served 2/1/95

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

Respondent Rose Securities for \$3,000,

calculated as follows: four hearing sessions at \$750/hearing session. equals \$3,000

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

*Concurring Arbitrators' Signatures*

Name

Harvey Flodin

Alexandra Linden

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Public / Industry

Public Arbitrator

Industry Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures

Harvey Flodin

Alexandra Linden

Monte Newman

Served 2/1/95

Date of Decision:

1-25-95

Respondent Rose Securities for \$3,000,

calculated as follows: four hearing sessions at \$750/hearing session. equals \$3,000

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

*Concurring Arbitrators' Signatures*

Name

Harvey Flodin  
Alexandra Linden  
Monte Newman

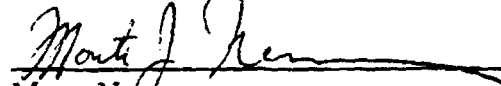
Public / Industry

Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Harvey Flodin

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Alexandra Linden

  
\_\_\_\_\_  
Monte Newman

Served 2/1/95

Date of Decision: Jan 17, 1995