

**NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

In the Matter of the Arbitration Between

Name of Claimant

Janet K. Wilson and Nancy M. Matthews

and

94-00122

Name of Respondent

Toluca Pacific Securities Corporation  
Robert L. Stormes

---

**REPRESENTATION OF PARTIES**

Janet K. Wilson and Nancy M. Matthews ("**Claimants**") were represented by John D. Phillips, Esq., Hall & Evans, L.L.C., Denver, CO.

Toluca Pacific Securities Corporation ("**Respondent**") was represented by Alan E. Karsh, Esq., Karsh & Fulton, Denver, CO.

Robert L. Stormes ("**Respondent**") did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 11, 1994. Submission Agreement of Claimant Janet K. Wilson was signed on January 21, 1994. Submission Agreement of Claimant Nancy M. Matthews was signed on January 21, 1994.

Statement of Answer was filed by Respondent Toluca Pacific Securities Corporation on or about March 4, 1994. Submission Agreement of Respondent Toluca Pacific Securities Corporation was signed on February 23, 1994 by Peter Blowitz.

Respondent Robert L. Stormes did not file a responsive pleading in this matter.

**HEARING INFORMATION**

The hearing was held on Monday, March 6, 1995 for two (2) sessions and Tuesday, March 7, 1995 for three (3) sessions in Denver, Colorado for a total of five (5) sessions.

**CASE SUMMARY**

Claimant alleged that Robert L. Stormes engaged in securities fraud, theft and conversion. Specifically, Claimants alleged that Respondent Stormes:

- ♦ established false accounts and addresses using their names and securities portfolios.
- ♦ engaged in a series of transactions which he fraudulently executed in their names.
- ♦ falsely endorsed checks for the proceeds of the fraudulent transactions and deposited those proceeds into an account of which he was a signatory.

Claimants Wilson and Matthews also alleged that Respondent Stormes sold securities in their IRA accounts without their permission, approval or knowledge and used the proceeds to purchase unsuitable securities and to churn their IRA accounts to generate commissions. Finally, Claimants alleged that Respondent Toluca failed to properly supervise Respondent Stormes; hired him; and made him Branch Manager of the Englewood office with knowledge of Respondent Stormes disciplinary history.

Respondent Toluca denied the allegations set forth in the Statement of Claim. Respondent Toluca specifically stated that it advised the Claimants of each contemplated transaction in their respective accounts and sought approval of each transaction. Affirmative defenses including but not limited to the following were asserted by Respondent Toluca:

- ♦ the actions of Respondent Stormes were beyond the scope and course of his actual or apparent authority and thus are not binding upon it.
- ♦ the claims are barred by the doctrines of waiver, estoppel and/or laches.
- ♦ the claimants are barred from recovery by virtue of the doctrines of ratification, acquiescence, confirmation and/or approval of the acts of Respondent Stormes.

#### **RELIEF REQUESTED**

Claimant Janet K. Wilson requested an award in an amount not less than \$100,000. Claimant Nancy M. Matthews requested an award in an amount not less than \$27,000. Claimants also requested damages for emotional distress; reimbursement for expert witness fees; exemplary damages; and attorneys' fees and costs.

Respondent Toluca requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Robert L. Stormes had **not** been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Robert L. Stormes had not received due notice of the hearing as required under §26 of the Code and that arbitration of the

matter would proceed pursuant to §29 of the Code without consideration of the claims asserted against Respondent Stormes.

Respondent Robert L. Stormes did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code").

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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 Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the Claimant Janet K. Wilson the sum of **Seventy five thousand dollars (\$75,000)**.
1. Respondent Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the Claimant Nancy M. Matthews the sum of **Twelve thousand dollars (\$12,000)**.
1. Respondent Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the Claimants Janet K. Wilson and Nancy M. Matthews the sum of **Eight hundred dollars (\$800)** as reimbursement for witness fees incurred for Terry Nielson.
1. Respondent Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the Claimants Janet K. Wilson and Nancy M. Matthews the sum of **One hundred fifty dollars (\$150)** as reimbursement for court reporter fees.
1. Respondent Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the Claimants Janet K. Wilson and Nancy M. Matthews the sum of **Thirty One thousand two hundred six dollars and thirty four cents (\$31,206.34)** as reimbursement for attorneys' fees. The undersigned arbitrators find that they have the authority to award attorneys' fees pursuant to the law in the State of Colorado.
1. Respondent Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the Claimants Janet K. Wilson and Nancy M. Matthews the sum of **Nine hundred fifty dollars (\$950)** as reimbursement for filing fees and the hearing session deposit previously paid to the NASD by the Claimants.

1. The claims and cross claim asserted against Respondent Robert L. Stormes were not considered by the undersigned due to the fact that it had determined that Respondent Stormes had not been served with the Statement of Claim and with notice of the hearing.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were sessions five (5) x \$750 = \$3,750 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Janet K. Wilson and Nancy M. Matthews. Respondent Toluca Pacific Securities Corporation shall be and hereby is liable for and shall pay to the NASD the sum of \$3,000 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's signature:

Dated:

**/s/ Donald P. Shwayder, Esq.**  
Donald P. Shwayder, Esq.  
Public Arbitrator, Presiding Chair

**April 5, 1995**

**/s/ Thaddeus J. Tecza, PhD.**  
Thaddeus J. Tecza, PhD.  
Public Arbitrator

**April 5, 1995**

**/s/ Richard M. Reider**  
Richard M. Reider  
Industry Arbitrator

**March 30, 1995**