

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

The DBL Liquidating Trust, successor

94-00383

Name of Respondent

Craigie, Inc.

---

**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on January 31, 1994, Claimant DBL Liquidating Trust, through its in-house counsel, Karen M. Cullen, Esq., alleged that Respondent Craigie, Inc. failed to pay to the Claimant his proportionate share of a settlement agreement entered into by the Claimant on behalf of the Respondent. The Claimant further alleged that in October 1981, it acted as a co-managing underwriter on behalf of a group of underwriters of which Respondent was a part, for the offering of 30,000 units of Texas General Resources, Inc. The Claimant contended that in March 1983, Texas General Resources, Inc. filed for protection under Chapter 11 of the Bankruptcy Code. The Claimant further contended that in August 1984, the Creditors Committee for the Noteholders of Texas General Resources, Inc. and the First Investors Bond appreciation Fund filed a class action, complaint on behalf of itself and others similarly situated ("Plaintiffs") against executives of Texas General Resources, Inc. The Claimant alleged that in an effort to avoid similar litigation between the Plaintiffs and the Underwriters, a settlement agreement between Drexel on behalf of itself and all Underwriters, and the Plaintiffs was executed as of January 12, 1988. The Claimant further alleged that pursuant to the Agreement among Underwriters, Respondent Craigie, Inc. was required to pay its proportionate share of any settlement agreed to by the Claimant and that, therefore, it is entitled to recover the amount in question.

Respondent Craigie, Inc., through its in-house representative John Thomas West, IV, its Executive Vice President, maintained that the Underwriting Agreement placed responsibility on all parties to act in a reasonable manner and that the Claimant have failed to do so. The Respondent further maintained that the Claimant had not contacted it to inform it that a litigation had commenced in 1984 or that a settlement had taken place in 1988. The Respondent contended that it was contacted by the Claimant on December 28, 1993 requesting a

proportionate share of the settlement amount. The Respondent further contended that it contacted the Claimant on January 3, 1994 expressing concern that no contact had been made informing it of the commencement and termination of the litigation and that no response was received from the Claimant. The Respondent maintained that the securities underwriters procedure is structured to benefit all parties and all parties have obligations to "make this process workable". The Respondent further maintained that one of those responsibilities should be the communication of pertinent data by all of those parties and that the Claimant has failed to do this. Therefore, the Respondent maintained that it had no obligation to make a payment to the Claimant.

In a reply to the Answer, the Claimant contended that there was no provision in the Underwriting Agreement which called for notification by the Claimant to the Respondent of the Texas General Resources, Inc. litigation and subsequent settlement agreement and, therefore the Respondent should be held liable.

#### **RELIEF REQUESTED**

Claimant DBL Liquidating Trust, requested \$4,523.00 in actual damages, plus costs and attorney's fees and pre-judgement interest at a rate of 9% from March 21, 1988.

Respondent Craigie, Inc. requested that the claims of the Claimant be dismissed.

#### **AWARD**

Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Bill Singer, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 27, 1994 and by the Respondent on March 23, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Craigie, Inc. is liable and shall pay to Claimant DBL Liquidating Trust \$4,408.40 in actual damages.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs and attorney's fees.

4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant DBL Liquidating Trust shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **BILL SINGER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: November 17, 1994

STATE OF: New York

SS:

COUNTY OF: New York

On this 15<sup>th</sup> day of November 1994, before me personally appeared Bill T. Singer, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



HUGH ROSS  
Notary Public, State of New York  
No. 02R05021613  
Qualified in New York County  
Commission Expires Dec. 20, 1995