

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Ralph Tedesco**

**94-00848**

**Name of Respondent**

**Philip Ernsberger**

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on March 4, 1994, Claimant Ralph Tedesco, who appeared Pro Se, alleged that Respondent Philip Ernsberger misrepresented the value of the security TREAT INTERNATIONAL ENTERPRISES, INC. and the present and future growth projection of the company. Claimant also alleged that Respondent misrepresented the price of the stock. Claimant further contended that Respondent opened an unauthorized second account in Claimant's name and a fictional name and conducted transactions for Great American Resorts through this account without his knowledge. Claimant contended that he has suffered damages due to Respondent's misrepresentations and fraudulent activity, and therefore should be compensated accordingly.

Respondent Philip Ernsberger, through his outside counsel James C. Cosby of Maloney, Yeatts & Barr, maintained that Claimant authorized the opening of the second account and furthermore Claimant provided the name used in the joint account. Respondent contended that Claimant authorized the opening of the second account due to the fact that his original account was frozen because of a check that was returned for insufficient funds. Respondent further maintained that when the second joint account was closed pursuant to Claimant's instructions, the securities in that account had to be transferred to Claimant's original account, and Claimant signed a form which authorized this transfer, and by signing the form he consented to the waiver provision, which waives any claim in connection with the securities listed on the form. The Respondent contended that the stock, TREAT INTERNATIONAL ENTERPRISES, was listed on this form and therefore, the claim has been waived by Claimant and further that the trade regarding Great American Resort was never executed. The Respondent also contended that any damages suffered by Claimant were due to his decisions and that since he has waived his right to assert a claim pursuant to the waiver he signed, the case should be dismissed.

Claimant in his Response to Respondent's Answer dated May 13, 1994 reiterated his prior claims and refuted the defenses of Respondents. Claimant further alleged that Respondent made false and misleading statements in their Answer dated May 5, 1994. Claimant contended that he has suffered damages due to Respondent's actions and should be compensated for his loss.

#### **RELIEF REQUESTED**

Claimant Ralph Tedesco requested \$7,763.00 in actual damages.

Respondent Philip Ernsberger requested that the claims of the Claimant be dismissed.

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

The motion to exclude information filed by the Respondent was reviewed and considered, and is hereby denied.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Arbitrator, Marc L. Ripp, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 1, 1994 and by the Respondent on April 6, 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. The claims of the Claimant Ralph Tedesco against Respondent Philip Ernsberger are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Ralph Tedesco shall be retained by the NASD, Inc.

**AFFIRMATION**

I, Marc L. Ripp, 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.

Marc L. Ripp, Esq.  
Signature of Arbitrator

DATE OF DECISION: March 31, 1995

STATE OF: NEW JERSEY

SS:

COUNTY OF: ESSEX

On this 28<sup>th</sup> day of March 1995, before me personally appeared Marc L. Ripp, Esq. known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Helen G. Migut

HELEN G. MIGUT  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 4, 1996