

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Daniel C. Thom and Sharon Kay Thom

94-01569

Name of Respondents and Third Party Claimants

First Affiliated Securities;
Jonathan E.S. Bekhor;
Lisa Roth;
Mark Dransfield

Name of Third Party Respondents

Rose Securities Corp.;
Roger Peavey;
Mitchell A. Witt

REPRESENTATION

For Claimants: Daniel C. Thom and Sharon Kay Thom ("Thom") were represented by Jonathan Kord Lagemann, Esq., of New York, New York.

For Respondents/Third Party Claimants: Jonathan E. S. Bekhor appeared at hearing pro se by telephone.

For Third Party Respondent: Roger Peavey appeared at hearing pro se.

CASE INFORMATION

Statement of Claim filed: April 26, 1994.

Claimants' Submission Agreement signed on: July 19, 1994.

Amended Statement of Claim filed on: March 2, 1994.

Motion to Dismiss pursuant to Section 12(d) of the NASD Code of Arbitration Procedure filed by Respondents First, Bekhor, Roth and Dransfield on: August 17, 1994.

Supplement to Motion filed on: August 24, 1994.

Claimants' Response to Motion to Dismiss filed: September 26, 1994.

Statement of Answer filed by Respondents Bishop Saxony Corporation (formerly known as Bekhor Securities Corporation) doing business as First Affiliated Securities ("First"), Jonathan E. S. Bekhor, Lisa Roth ("Roth") and Mark Dransfield ("Dransfield") on: September 21, 1994
Respondent First's Submission Agreement signed on: September 21, 1994 by Donna Bartlett, AVP/Compliance Dept., Bishop Saxony Corporation.

Respondent Bekhor's Submission Agreement signed on: September 22, 1994.

Respondent Roth's Submission Agreement signed on: September 22, 1994.

Respondent Dransfield's Submission Agreement signed on: September 26, 1994.

Claimants' Motion to Bar Respondents from Presenting Facts and Defenses Not Included in the Answer at Hearing filed: September 26, 1994.

Response to Claimants' Motion to Bar Respondents First, Bekhor, Roth and Dransfield from presenting any facts not contained in their answer filed: March 8, 1995.

Respondent Bekhor's, First's, Roth's and Dransfield's Third Party Claim for Equitable Indemnity and Contribution Against Rose Securities Corporation and Mitchell Witt, and Respondent First's Third Party Claim against Roger Peavey filed: November 18, 1994.

Third Party Respondent Rose Securities Corporation's ("Rose") Submission Agreement signed on: February 6, 1995 by John H. von Rusten, Executive Vice President, Rose Securities Corporation.

Third Party Respondent Rose Securities' Answer to Third Party Claim for Equitable Indemnity and Contribution filed: February 9, 1995.

Third-Party Respondent Witt's Response to the Third-Party Claim filed on: March 29, 1995.

Claimants' Motion to Amend Statement of Claim and Motion to Bar Witt from Presenting Facts or Defenses at Hearing filed: April 10, 1995.

Roth's Response to the Motion to Bar Witt from Presenting Facts or Defenses at Hearing and Motion to Amend Statement of Claim filed: April 18, 1995.

Third-Party Respondent Peavey's Answer to Complaint and Third-Party Complaint filed: April 26, 1995.

Declaration of Non-Participation in Putative Class filed by Claimants on: May 2, 1994.

Third-Party Respondent Witt's Opposition to Claimants' Motion to Bar Witt from Presenting Facts or Defenses filed: April 28, 1995.

Third Party Respondent Rose Securities' Motion to Dismiss filed: May 3, 1995.

Joinder of Third Party Respondent Witt in Rose Securities Motion to Dismiss filed: May 22, 1995.

Claimants' Response to Rose Securities Corporation's Motion to Dismiss filed: May 26, 1995.

Third Party Respondent Rose Securities' Supplemental Memorandum in Support of its Motion to Dismiss filed: June 6, 1995.

Motion to Dismiss filed by Roth on: May 15, 1995.

Response to Motion to Dismiss filed by Claimants on: May 16, 1995.

Supplemental Response to Motion to Dismiss filed by Claimants on: May 17, 1995.

HEARING INFORMATION

Pre-Hearing Conference: June 14, 1995 before the full panel.

Hearing Dates/Sessions: June 20, 1995 for Two (2) sessions;
June 21, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan

CASE SUMMARY

Claimants alleged that Respondents were involved in an alleged fraudulent sale of Towers Financial Corporation Notes. The Claimants specifically alleged that:

1. The Thoms had previously settled an arbitration with Third Party Respondent Rose, but had failed to recover all their damages. During discovery of the Rose arbitration, the Claimants learned that First had played a central role in the fraud involving the Towers Notes;
2. Two purchases of the Towers Notes were made through First when it was determined that Rose and Witt were not registered to sell securities in Michigan. The Thoms were not informed that the purchases were made through First. If the Thoms had been told that Rose and Witt were not registered with Michigan and that the trades were run through First to avoid registration, they would have rescinded the trade and ceased doing business with Towers;
3. The Thoms never knowingly maintained an account at First and never provided First with any financial data of themselves. First fraudulently concealed its involvement and violated Federal Securities laws and NASD Rules;
4. The running of trades for unregistered broker-dealers was a direct violation of

all record keeping and supervisory requirements.

Respondents First, Bekhor, Roth and Dransfield denied the material allegations of the Statement of Claim, alleging several defenses, including the following:

1. The Claimants were solicited by Witt, who was licensed through Rose Securities. After approximately \$155,000 in purchases of Towers Notes were made, the trades were reversed because Witt and Rose were not licensed in Michigan. The trades were later handled through First;
2. Respondents Bekhor, Roth and Dransfield have no individual liability in this matter;
3. The losses, if any, were caused by Rose Securities, Witt and Peavey;
4. First was not obligated to send confirmations to Claimants because the purchases complained of were direct purchases from Towers Financial Corporation and confirmations did not issue. In addition, no statements of account were sent because Claimants did not have an account at First;
5. The Claimants have failed to state a claim upon which relief can be granted; and
6. The Claimants assumed the risk of their investments.

Respondents First, Bekhor, Roth and Dransfield filed a third party claim against Third Party Respondents Rose and Witt for indemnification. In addition, Respondent First filed a third party claim against Third Party Respondent Peavey for indemnification.

Third Party Respondent Rose denied the material allegations of the Third Party claim, asserting that Rose settled the initial arbitration by paying to the Thoms the full face amount of the notes which they purchased and was not liable for any additional indemnification.

Witt denied the material allegations of the Third Party claim,, alleging that there was no factual or legal basis for the claim against him and that the settlement bars any claims arising from the same transactions which were the subject of the underlying claim against First.

Third Party Respondent Peavey denied having any contact with the Claimants.

RELIEF REQUESTED

Claimants requested entry of an award for damages in excess of \$100,000.00, attorneys' fees, interest, punitive damages, and the assessment of all costs against Respondents.

Respondents First, Bekhor, Roth and Dransfield requested that the Claimants take nothing on their claim and that the Statement of Claim be dismissed with prejudice; attorneys' fees and cost; and for such other relief as the Panel deemed proper. In addition, the Respondents requested indemnification from Third Party Respondents, Rose Securities, Witt and Peavey.

Third Party Respondent Rose Securities requested that the Panel dismiss the action against Rose and deny the claim asserted against them.

Third Party Respondent Witt requested an award dismissing the claim and awarding him his costs, expenses and attorneys' fees in defending the claims.

Third Party Respondent Peavey requested that the third party claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Third Party Respondents Peavey and Witt did not file an executed submission agreement, but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure. In addition, Peavey answered and appeared at hearing.

On September 29, 1994, the Director of Arbitration denied Respondents' Motion to Dismiss pursuant to Section 12(d) of the NASD Code of Arbitration Procedure.

By letter dated May 11, 1995, Claimants advised the NASD staff that they had settled their claims against Respondent Mark Dransfield. Accordingly, the claims against Mr. Dransfield are dismissed with prejudice.

At the pre-hearing on June 14, 1995, the Panel heard argument on several issues. At the conclusion of argument, the Panel conducted an executive session and made several rulings, including the following:

1. Lisa Roth was voluntarily dismissed as a party respondent by the Claimants;
2. The Motion to Dismiss Rose Securities Corporation as a party defendant was granted;
3. The Motion to Dismiss Mitchell Witt as a party respondent was granted;

4. The Motion to Amend the Statement of Claim to include a claim under the Michigan Securities Law was granted;
5. Claimants' Motion to Bar First Affiliated and Bekhor from presenting any facts or defenses which were not specifically articulated in their Statements of Answer was granted;
6. The Motion to Bar Witt from presenting any facts or defenses in response to the Statement of Claim was dismissed as moot since he was dismissed as a party respondent; and
7. The Motion to Bar Peavey from presenting any facts or defenses to the Statement of Claim is granted unless he appeared at hearing.

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 First Affiliated Securities is liable for and shall pay to Claimants Daniel C. Thom and Sharon Kay Thom the sum of \$12,000.00 as actual damages;
2. The claims for punitive damages are dismissed with prejudice;
3. All claims against Respondent Jonathan E. S. Bekhor and Third Party Respondent Peavey are dismissed with prejudice and denied in their entirety;
4. Pursuant to the Panel's decision of June 15, 1995 after the conference with the full panel, the claims against Respondent Lisa Roth and the Third Party claims against Third Party Respondent Rose Securities Corp. and Mitchell A. Witt are dismissed with prejudice;
5. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
6. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing before the full panel x \$750.00 = \$750.00; Four (4) hearing sessions x \$750.00 per session = \$3,000.00; Total Forum fees = \$3,750.00..

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Claimants, Daniel C. Thom and Sharon Kay Thom. In addition, the NASD shall retain the Section 45 surcharge of \$200.00, the claim filing fee of \$500.00, and the hearing session deposit of \$750.00 previously paid by Respondents First Affiliated Securities, Jonathan E. S. Bekhor, Lisa Roth, and Mark Dransfield. Respondent First Affiliated Securities is liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Leah M. Balk, Esq.

August 7, 1995

Leah M. Balk, Esq.

Public Arbitrator

Chairperson

/s/ E. Daniel Grady

August 7, 1995

E. Daniel Grady

Public Arbitrator

/s Norman A. Samson

August 7, 1995

Norman A. Samson

Industry Arbitrator

For NASD Use Only

Date of Decision: August 7, 1995