

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Grant R. Elam

94-01594

Name of Respondents

Toluca Pacific Securities Corp.
Dan Katz
Peter Blowitz

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 29, 1994, Claimant Grant R. Elam ("Claimant"), who appeared Pro Se, alleged that Respondent Toluca Pacific Securities Corporation ("TPS"), through its representative, Respondent Dan Katz ("Katz"), made an unauthorized purchase of 3,500 shares of Big Boy of the Pacific, Inc. ("BBP") in his account. Claimant contended that he had authorized Respondent Katz only to sell his shares of MRI Medical Diagnostics, Inc. ("MRI") and that he received confirmation of this trade dated November 13, 1992, but that the BBP purchase was unauthorized and had taken place before the sale of his MRI stock, and therefore, was executed when there were insufficient funds in his account to cover the trade. Claimant alleged that on November 27, 1992 he received a statement from U.S. Clearing Corp. that his account was delinquent and further alleged that when he contacted Respondent Katz he told him that he would rectify the situation and reinstate the account for the total due. Claimant contended that when he heard nothing further, he contacted Respondent Peter Blowitz, President of TPS ("Blowitz"), who first said he would rectify the situation but a few days later, said that the trade had been authorized and that Respondent Katz "was ready to go to arbitration", and later Respondent Blowitz failed to return his calls. The Claimant contended that as a result of the above, he has suffered a loss for which Respondents should be held liable.

Respondents Toluca Pacific Securities Corporation and Peter Blowitz, through their representative, Peter Blowitz, maintained that Claimant presented himself to Katz as an intelligent individual who was a business consultant and capable of making his own investment decisions. Respondents TPS and Blowitz further maintained that TPS was informed by Katz that Claimant "had known about the purchase of BBP and decided to 'not know' the purchase after the shares declined in value." Respondents contended that when Claimant informed TPS that he did not authorize the trade, Respondent Katz later informed TPS that the Claimant would accept the trade and that he had known about it at all times. Respondents further contended that Claimant has not contacted them since December 1, 1992 and denies Claimant's allegations that Blowitz had failed to answer his phone messages. Respondents maintained that they committed no wrongdoing and should not be held liable in this matter.

Respondent Dan Katz failed to file an answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Grant R. Elam requested \$7362.50 in actual damages, plus filing fees.

Respondents Toluca Pacific Securities Corporation and Peter Blowitz requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Although reasonable attempts at service were made upon the Respondent Dan Katz, he could not be located, and did not have notice of this claim.

AWARD

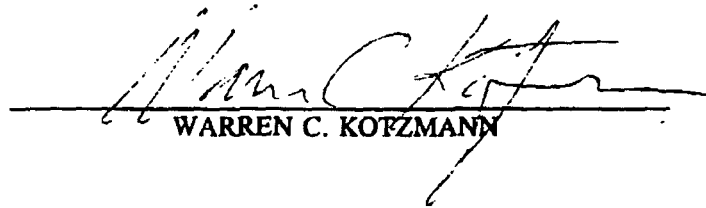
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Warren C. Kotzmann, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 20, 1994 and by the Respondents Toluca Securities Corporation and Peter Blowitz on July 20, 1994, but not by Respondent Dan Katz as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure..

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. Respondents Toluca Pacific Securities Corporation and Peter Blowitz are jointly and severally liable and shall pay to the Claimant Grant R. Elam \$7,362.50 in actual damages.
2. The claims of the Claimant Grant R. Elam against Respondent Dan Katz are dismissed without prejudice.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Toluca Pacific Securities Corp. and Peter Blowitz are jointly and severally liable and shall pay to the Claimant Grant R. Elam, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **WARREN C. KOTZMANN, 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.



WARREN C. KOTZMANN

DATE OF DECISION: **December 27, 1995**