

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

John A. Thomas

NASD Arbitration  
94-02202

vs.

Name of Respondents

Stuart Coleman & Company, Inc.  
and Donald Hunter

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REPRESENTATION

For Claimant: William Garfield, Esq., of Los Gatos, CA 95032

For Respondents: Stuart Coleman & Co. (SC) - Victor Sicuranza, Esq. of SC, New York, N.Y.  
Donald Hunter (Hunter) - Pro Se, New York, N.Y.

CASE INFORMATION

Statement of Claim filed: June 1, 1994

Claimants' Submission Agreement signed: May 27, 1994

Statement of Answer filed by Respondents on: SC - September 12, 1994  
Hunter - September 14, 1994

Respondents' Submission Agreements signed on: SC - September 12, 1994

Hunter did not file a Submission Agreement but is subject to NASD jurisdiction in accordance with NASD Code of Arbitration Procedure Section 12. Hunter did not appear at the hearing; his requests for an adjournment and to appear by telephone were denied by the panel.

## HEARING INFORMATION

Prehearing Conference(s) Dates(s)/(Sessions): March 31, 1995 - one

Hearing Date/(Sessions): April 5, 1995 - two

Hearing Location: San Francisco, California

## CASE SUMMARY

Claimant Thomas alleged:

Fraud, misrepresentation, negligence, breach of contract, lack of suitability and breach of fiduciary duty in the purchase of unspecified speculative, small capitalization stocks and units of a company called Full House (FH). Thomas became a customer of Hunter in January 1991 while Hunter was employed by another firm, investing his retirement account in blue chip, large capitalization stocks.

Respondent SC denied all allegations of wrongdoing and alleged:

Claimant was fully aware of all relevant facts regarding the investments he made prior to and after the investments were made. Thomas advised Hunter that the IRA account in question would be used for more speculative investments to provide more rapid growth, while the other accounts would provide a more conservative base. Claimant entered into the FH transaction knowing the security in question was not registered for sale to California residents; SC was not put on notice of any problem because Claimant's mother may have lived at the New York address.

Respondent Hunter denied all allegations of wrongdoing and alleged:

Claimant wanted to become involved in more aggressive trading and suggested speculative stocks. Full disclosure was made on all investments. Claimant was 47 years old with a six figure income and chose to use his IRA to speculate. Hunter used an address of someone Hunter knew in New so Thomas could invest in FH, and sent duplicate confirms to Claimant's address in California.

### RELIEF REQUESTED

Claimant requested:

1. Rescission of the transactions;
2. Restitution;
3. Compensatory damages;
4. Exemplary damages;
5. Interest, as requested at the hearing.

### OTHER ISSUES CONSIDERED & DECIDED

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.

Respondent Hunter's requests to adjourn and appear by telephone were denied by the panel.

### 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. Respondents are jointly and severally liable for and shall pay Claimant \$18,302, plus interest of \$2,190;
2. The parties shall each bear their respective attorney's fees;
3. The parties shall each bear their respective costs.

## FORUM FEE

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall refund the \$750 hearing session deposit previously deposited by the Claimant. The correct hearing deposit for a \$71,020 claim is \$500. Forum fees assessed against:

Respondents, jointly and severally for \$1300,

calculated as follows; one prehearing session at \$300/prehearing session, plus two hearing sessions at \$500/hearing sessions, equals \$1,300.

Fees are payable to the National Association of Securities Dealers.

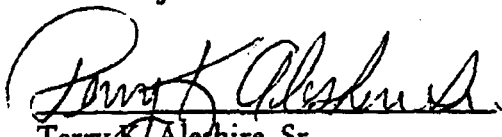
## ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Walter P. Hitchcock	Public
Matthew J. Williams	Industry
Terry K. Aleshire, Sr.	Public

## Concurring Arbitrators Signatures

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Walter P. Hitchcock

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Matthew J. Williams

  
Terry K. Aleshire, Sr.

Date Served: 04/20/95

Date of Decision: \_\_\_\_\_