

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

J. Edmund & Co.

vs.

Case #

95-00113

Name of Respondents

Robert Todd Financial Corp.

Robert Fallah

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**REPRESENTATION**

For Claimant, J. Edmund & Co., John E. Ligums, President of J. Edmund & Co.

For Respondents, Robert Fallah, President of Robert Todd Financial Corp., Mark J. Astarita, Esq. of Gusrae, Kaplan & Bruno, located in New York, New York.

Respondent Robert Todd Financial Corp. did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim was filed on February 13, 1995.

Claimant's Submission Agreement was signed on January 5, 1995 and April 27, 1995.

Amended Statement of Claim dated April 27, 1995.

Statement of Answer to the Amended Statement of Claim filed by Respondent, Robert Fallah was filed on June 24, 1995.

Respondents did not signed a Submission Agreement.

Respondent Robert Todd Financial did not file a Statement of Answer or execute a Submission Agreement.

**HEARING INFORMATION**

Hearing Date/Hearing Session:	March 1, 1996	-	one session
	March 26, 1996	-	one session

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, 16th Floor, Boston, Massachusetts.

**CASE SUMMARY**

Claimant alleges that during the period at issue J. Edmund & Co. and Respondent, Robert Todd Financial Corp. were registered broker-dealers and members of the NASD. Claimant further alleges that Co-

Respondent, Robert B. Fallah, was believed to be the President of Robert Todd Financial Corp.

Claimant alleges that on December 8, 1993, prior to its initial public offering of US LAN Systems Corporation securities, Respondent Robert Todd was admitted as a member of the underwriting syndicate and requested an allocation of 125,000 shares which he claimed would be retained for sale to the public. Claimant avers that the terms and amounts were confirmed via an Allocation Wire/Data Sheet which also bore the legend "ALSO PLEASE NOTE THAT THIS OFFERING IS SUBJECT TO A SYNDICATE PENALTY BID..."

Claimant asserts that an executed Agreement Among Underwriters ("Agreement") should have been received by it before the December 10, 1993 date of the public offering, but despite numerous efforts and representations by Respondent that the document was sent, it did not arrive. Claimant also alleges that about 3 p.m. on the effective date, in accordance with standard procedures of firm commitment underwriting, Respondents confirmed that their position of 125,000 shares had been "all sold." However, Claimant alleges that by 5:28 p.m. of the same day, Respondents attempted to renege on the commitment claiming they had lost some orders and were requesting that the "all sold" order be disregarded.

Claimant asserts that on December 13, 1993, in a meeting between Respondent Fallah and Claimant's representative John Ligums, they agreed that the Respondents would continue to underwrite the 125,000 shares but that the total allocation would be reduced to 115,000. Claimant also asserts that the original instructions of the Agreement were resent in response to Respondents' assertion that they were never received.

Claimant alleges that in Mid-January, in response to a telephone call about the Agreement which had still not arrived, Respondents made it clear that they would not send the Agreement until they received a thirteen percent (13%) compensation. Claimant alleges that the definitive terms of the US LAN prospectus, offered only a maximum underwriter's discount of ten percent (10%), and noted that the eight percent (8%) net underwriting discount to be received by Respondents was consistent with the terms of the Agreement.

Moreover, Claimant alleges that based on information obtained from transfer sheets, from tracking the delivery and sales of US LAN securities and from conversations with operations and clearinghouse personnel, it was discovered that certificates representing Respondents' allocation were sold and or delivered during the penalty bid period. Claimant alleges that on February 9, 1994, a claim of \$26,230.00 (the amount was calculated by using the original discount allowed underwriters in the US LAN offering of \$0.43 per share) was sent to Respondents. Claimant further asserts that Respondents had not sold any of the US LAN securities, but later admitted through Respondent Bernard Golembe, that a total of 41,500 shares were sold or delivered during the first four weeks of trading.

In a three count Amended Statement of Claim, Claimant alleges breach of contract, and violation of NASD Rules of Fair Practice, Article III, Section I. Claimant asserts that as a result of Respondents' persistent refusal to sign the Agreement and to turn over a complete territorial distribution of the shares sold in connection with the US LAN public offering, Claimant has incurred significant expenses and administrative resources to resolving the matter.

Respondent Fallah denied all allegations of wrongdoing as set forth in the Amended Statement of Claim. and argue that the Claimant and Robert Todd Financial Corp. had an agreement which Claimant failed or refused to memorialize. Respondent Fallah asserts that after Robert Todd had, at

Claimant's urging, agreed to underwrite 125,000 shares of US LAN initial public offering, Claimant disclaimed the parties' understanding and therefore any expenses Claimant incurred resulted from Claimant's own failure to complete documentary record and pay Respondent Robert Todd as agreed.

Respondent Fallah affirmatively defends by asserting (i) that the Amended Statement of Claim failed to state a cause of action upon which relief can be grounded and (ii) that he may not be held personally liable for the allegations of wrongdoing set forth in the Amended Statement of Claims, since the obligations arising from the alleged agreement were obligations of the corporate entity.

As previously stated, Respondent Robert Todd did not file an Answer or appear at the hearing to defend the allegations.

#### **RELIEF REQUESTED**

Claimant requests that the panel award him the following relief:

- a) that Respondents be required to provide an original signed copy of the Agreement, in the required form, relating to the US LAN offering of December 10, 1993;
- b) that Respondents be required to provide a response to the additional information requested relating to the territorial distribution of the US LAN offering of December 1993;
- c) that Respondents shall pay Claimant the full amount of the penalty bid for 61,000 shares, namely \$26,230.00;
- d) that Claimant be fully reimbursed for all its expenses, including but not limited to legal fees and disbursements, interest and staff and administrative expenses incurred in the collection of the amount due and the attempts at obtaining a signed copy of the Agreement Among Underwriters. These expenses are estimated at \$4,511.00 prior to the submission of the Statement of Claim and \$2,775.00 in connection with the preparation, filing fees and submission; and
- e) that the panel awards punitive damages to guard against a repetition of like behavior in the future.

Respondent Fallah requests that he be awarded damages for breach of contract. Respondent further requests that Claimant be denied its claim for punitive damages.

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

The hearing in the matter was first scheduled to be conducted on March 1, 1996. On the day of the hearing Respondent Fallah filed a postponement request via facsimile at the hearing location. The panel granted this request, assessed him a \$600.00 postponement fee, and rescheduled the hearing for March 26, 1996.

Respondent Robert Todd did not appear at either the March 1, 1996 or March 26, 1996 hearing dates. Based upon the documentary evidence submitted by the NASD staff that notices to this Respondent were sent to its president Robert Fallah, this panel ruled that notice was given and proceeded with the hearing in the firm absence in accordance with Sections 25 and 29 of the *Code of Arbitration Procedure* ("*Code*")

#### **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, Robert B. Fallah's motion for dismissal of the claims as they relate to him, is granted.

2. Claimant is awarded TWENTY EIGHT THOUSAND, THREE HUNDRED SIXTY FOUR DOLLARS AND FOUR CENTS (\$28,364.04) against Respondent Robert Todd Financial Corp.

#### **FORUM FEES**

Pursuant to Section 44(c) of the *Code*, the following Forum Fees are assessed:

1. Forum Fees in the amount of \$600.00 for two (2) hearing sessions at \$300.00 per session are assessed against the parties as stated in paragraphs 2 and 3;

2. Respondent, Robert Todd Financial Corp., is assessed \$300.00;

3. Claimant is assessed \$300.00;

4. Claimant is further assessed a \$500.00 non-refundable filing fee and \$200.00 member surcharge.

5. Respondent, Robert Todd Financial Corp., is further assessed \$200.00 member surcharge. The total amount of fee due by Respondent is \$500.00.

6. Respondent, Robert Fallah, was assessed \$300.00 postponement fee which has not been paid.

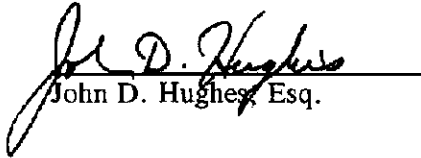
Fees are payable to the National Association of Securities Dealers, Inc.

#### **ARBITRATION PANEL**

John D. Hughes, Esq.	-	Industry Chairperson
Julian Daly, Esq.	-	Industry Panelist
Michael B. Fines, Esq.	-	Industry Panelist

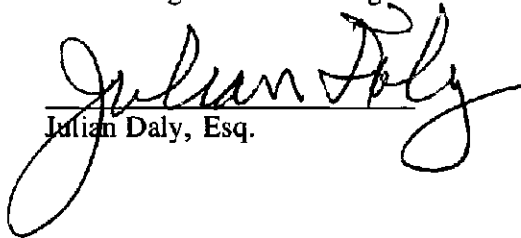
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Concurring Arbitrator's Signature

  
John D. Hughes, Esq.

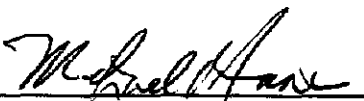
NASD's Date of Decision: April 29, 1996

Concurring Arbitrator's Signature

  
Julian Daly, Esq.

NASD's Date of Decision: April 29, 1996

Dissenting Arbitrator's Signature

  
Michael B. Fines, Esq.

NASD's Date of Decision: April 29, 1996