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N.A.S.D. AWARD

9600061

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Burton Brooks

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95-00255

Name of Respondents

Berkeley Securities Corp
Stephen C. Floto
Israel Cohen

REPRESENTATION

For Claimant, Burton Brooks, ("Brooks"): Stephen C. **Sadin, Esq.** of **McKenna, Storer, Rowe, White & Farrug**, Chicago, IL.

For Respondent Berkeley Securities Corp., ("Berkeley"): **Ezio Scaldaferrì, Esq.** of **Federici, Berke, Kaszovitz, Isaacson, Weber, Skala & Bass LLP**, New York, NY. (see "Other Issues").

For Respondents, Steven Floto and Izzy Cohen, ("Floto and Cohen"): Paul P. Rao, Jr. of New York, NY.

CASE INFORMATION

Statement of Claim filed January 17, 1995.

Claimant's Submission Agreement signed on January 13, 1995.

Statement of Answer filed by Respondent, Berkeley, on June 12, 1995.

Joint Statement of Answer and Counterclaim filed by Respondents Floto and Cohen on June 14, 1995.

Respondents', Floto and Cohen, Uniform Submission Agreement signed on June 2 and 5, 1995 respectively.

HEARING INFORMATION

On April 10 and 11, 1996, in Fort Lauderdale, Florida, **hearings** lasting three sessions were

conducted.

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CASE SUMMARY

Claimant, alleged that in or about September, 1993, respondents Floto and Cohen contacted Brooks by telephone, solicited his business, and caused Brooks to open a securities account with Berkeley. In February, 1994, Floto and Cohen made certain misrepresentations of material facts to Brooks regarding Florida West Airlines (TWA") and failed to state certain material facts regarding FWA which, had Brooks known them to be true, would have otherwise caused Brooks not to make investments in the stock of FWA. At the urging of Floto and Cohen, Brooks made several investments in Florida West between February, 1994, and May, 1994, in the stock of Florida West and incurred losses in the amount of **\$61,967.50**. In August and September, 1994, Floto and Cohen solicited Brooks to purchase stock in Grand Casino and made misrepresentations of material facts regarding that stock. As a result of this acquisition and misrepresentations made by Floto and Cohen, Brooks incurred a loss in the amount of **\$9,221.00**. Brooks is entitled to an award as a result of damages incurred because of the misrepresentations or omissions of material fact made by Floto and Cohen.

Respondents, Floto and Cohen, denied all allegations of wrongdoing and alleged that they acted responsibly, properly, ethically and in accordance with accepted industry standards and practices. The respondents made stock recommendations founded upon a reasonable basis in fact and a good faith belief regarding the reliability of the publicly disseminated information received. Floto and Cohen contends that they depended on their diligent research, in exercising informed judgement in providing the claimant with full disclosure of all of the sources of their information which included all material news as it occurred, making no misrepresentations, additions or deletions as to the available data.

Respondents, Floto and Cohen filed a Counterclaim to seek costs for this proceeding.

RELIEF REQUESTED

Claimant Requested Compensatory damages in the amount of **\$110,000.00**, costs of this proceeding, attorney's fees and for any other relief the panel deems appropriate.

Respondents, Floto and Cohen, requested dismissal of the claim in its entirety.

Respondents, Floto and Cohen, counter-claim for the amount of their costs for this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant prior to the proceedings, dismissed Respondent Berkeley Securities Corporation from this arbitration.

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.

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AWARD

After considering the pleading, 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, Steven Floto and Izzy Cohen are found not liable and, therefore, all claims against them are hereby dismissed.
- 2) Claimant's requests for attorney's fees and costs are denied.
- 3) **Claimant/Counter** Respondent, Burton Brooks, is found liable and shall pay to the Respondents Floto and Cohen, Counter Claimants, the total amount of **\$13,900.00** for their costs in this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the **Panel** has assessed forum fees in the amount of **\$2,250.00** (three hearing sessions x \$750.00).

Claimant is hereby assessed **\$2,250.00** for which the NASD shall retain the hearing session deposits of \$750.00 and \$600.00 previously deposited by Claimant and Respondents respectively, in partial satisfaction thereof, leaving a balance due to the NASD of \$900.00.

The NASD shall retain the non-refundable filing fees of \$200.00 and \$500.00 previously paid by Claimant and Respondent respectively.

Claimant shall reimburse Respondents Floto and Cohen \$600.00 for their hearing-session deposit and \$500.00 for their non-refundable **filing** fee previously paid for by Respondents for their Counter-Claim.

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

Concurring Arbitrators' Signatures

Name

/s/

Leo H. Kerns, Esq.

/s/

Leslie Bishop

/s/

Lawrence Gale

Public/Industry

Public

Industry

Public

June 12, 1996

Date of Decision: _____