

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Terrell R. Holtzclaw

Award  
95-00452

Name of Respondents

Biltmore Securities, Inc.  
Clifford J. Berman  
Arnold Roseman  
Richard Bronson  
Elliot Lowenstein

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 27, 1995, Claimant Terrell R. Holtzclaw, through his representative, Shawn R. Holtzclaw, Esq. of Cushings & Morris in Atlanta, GA, alleged that Respondents Biltmore Securities, Inc. ("Biltmore"), Clifford Berman ("Berman"), Arnold Roseman ("Roseman"), Richard Bronson ("Bronson") and Elliot Lowenstein ("Lowenstein") purchased and sold securities in his account without authorization, made misrepresentations, omitted material facts and breached their fiduciary duties. Claimant further alleged that in accordance with their standard scheme, Respondents solicited Claimant to initially purchase a legitimate "blue chip" stock, Louisiana Pacific Corp., and then induced him to make all future purchases in minimally-capitalized, high risk house stock through deceptive misrepresentations and non-disclosures or unauthorized transactions by Respondent Berman. Claimant contended that Respondent Berman sold 5,000 shares of Harmony Holdings on June 26, 1994 and purchased 4,200 shares of Computer Marketplace on June 16, 1994, without authorization. Claimant further contended that Respondent Berman continually used high pressure sales tactics misleading deceptive and exaggerated representations and predictions and recommended stocks without disclosure of risks involved. Claimant alleged that on June 23, 1994 he contacted the office of Respondent Berman and instructed Berman's assistant to liquidate all of his holdings. Claimant further alleged that his instructions were not followed. As a result of the above, Claimant alleged that he has suffered a loss for which Respondents should be held liable.

Respondents Biltmore, Berman, Roseman, Bronson and Lowenstein, through their representative, Alan N. Forman, Esq. of Bernstein and Wasserman, LLP, New York, New York, maintained that Claimant authorized and directed all transactions in his account after thoroughly discussing the risks and merits of each transaction with his broker. Respondents further maintained that Claimant was in full control of his Biltmore account at all times. Respondents contended that Respondent Berman discussed each investment with the Claimant, fully explained the risks and merits concerning each investment, and answered all questions concerning each investment. Respondents further contended that Claimants investments in Harmony Holdings Corp. and Computer Marketplace, Inc. were authorized and directed by Claimant after he was fully and accurately appraised of all risks. As a result of the above, Respondents maintained that they should not be held liable for Claimants loss.

#### **RELIEF REQUESTED**

Claimant, Terrell R. Holtzclaw, requested \$9,122.50 in actual damages, plus interest, unspecified punitive damages, costs and attorney's fees.

Respondents, Biltmore, Berman, Roseman, Bronson and Lowenstein, requested that the claims of the Claimant be dismissed.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William Edmund Burke, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 26, 1995. The Respondents did not submit submission agreements.

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. The claims of the Claimant, Terrell R. Holtzclaw, against the Respondents, Biltmore Securities, Inc., Clifford Berman, Arnold Roseman, Richard Bronson and Elliot Lowenstein are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Terrell R. Holtzclaw, shall be retained by the NASD, Inc.

Affirmation

STATE OF

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COUNTY OF

I, William Edmund Burke, do hereby affirm upon my oath  
as arbitrator that I am the individual described in and who executed this instrument,  
which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: September 29, 1995