

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

In the Matter of the Arbitration Between

Terry P. Murphy,

Claimant,

v.

No. 95-00490

Biltmore Securities, Inc.,

Elliot Loewenstern,

Darolyn Colodny,

Chris Hyatt,

Michael Steinberg,

Lee M. Rough, and

Richard Bronson,

Respondents.

---

### REPRESENTATION OF PARTIES

Terry P. Murphy ("**Claimant**") was represented by John J. Miller, Esq., of Nygaard & Miller, Overland Park, Kansas.

Biltmore Securities, Inc. ("**BSI**"), Elliot Loewenstern ("**Loewenstern**"), Darolyn Colodny ("**Colodny**"), Chris Hyatt ("**Hyatt**"), Michael Steinberg ("**Steinberg**"), Lee M. Rough ("**Rough**"), and Richard Bronson ("**Bronson**") (or collectively referred to as "**Respondents**") were represented by Marc J. Ross, Esq., and Edward Degenhart, Esq., of Bernstein & Wasserman, New York, New York.

### CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 23, 1995. Claimant's Submission Agreement was signed on January 18, 1995. Claimant's Amendment to the Statement of Claim was filed on or about June 2, 1995. Claimant's dismissal without prejudice of Respondents Colodny and Hite was filed on or about December 4, 1995.

Respondents' joint Statement of Answer was filed on or about April 27, 1995. The NASD does not have a record of Respondents' having filed Submission Agreements.

### **HEARING INFORMATION**

Pre-hearing conferences were held on November 10 and 20, 1995 for one (1) session each day.

The hearing was held on December 11, 1995 in Kansas City, Missouri for a total of two (2) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents: violated Kansas and Federal Securities Acts through the offering and sale of securities by means of untrue statements of material fact and omission of material fact which operated as a device, scheme and/or artifice to defraud or deceive him; committed fraud and made misrepresentations to Claimant; were negligent in their failure to use reasonable diligence in supervising Rough, Steinberg, Colodny and other brokers or monitoring their abusive practices; breached their contract; violated NASD Rules; breached their fiduciary duty owed to the Claimant; and violated Federal RICO statutes. The allegations arose out of transactions in Harmony Holdings ("Harmony") and Dollar Time Group ("DTG") in his account at BSI.

Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted the following affirmative defenses: Claimant authorized and directed every transaction for his account at BSI; the Statement of Claim fails to set forth any cause of action against Respondents; Claimant is estopped by his own conduct from asserting the claims set forth in his Statement of Claim; Claimant ratified each and every transaction in his account at BSI; Claimant waived all claims against Respondents; Respondents did not violate any applicable law or rule; Respondents made no misrepresentation or omission to Claimant; Respondents did not act negligently in handling Claimant's account at BSI; Respondents did not breach any fiduciary duty owed to Claimant; each and every transaction was suitable given Claimant's financial status and stated investment objectives; BSI properly supervised its account executives with regard to Claimant's account at BSI; Claimant may not recover for punitive damages, as same are not supported by the facts nor permitted by applicable law; Respondents did not breach any contractual duty or obligation owed to the Claimant; and Lowenstern, Bronson, and Colodny are not liable to Claimant as they were not the registered representatives who handled Claimant's account, nor are they even alleged to have spoken with Claimant concerning his BSI account.

### **RELIEF REQUESTED**

Claimant requested an award against the Respondents in the amount of: \$32,086.73 for his realized capital losses in Harmony and DTG; interest at 15% from the date of purchase; attorneys' fees and costs of this proceedings; punitive damages; and RICO damages.

Respondents requested that the claims asserted against them be dismissed and that they be awarded their costs and attorneys' fees incurred in defending this action.

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

Respondents did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, and are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **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:

Respondents Biltmore Securities, Inc., Elliot Loewenstern, Michael Steinberg, and Richard Bronson are jointly and severally liable for, and shall pay to the Claimant the sum of \$34,272.00 as satisfaction of his claim for actual damages and interest.

Claimant's claims made against Rough are, and each of them, denied and dismissed with prejudice.

Respondents Biltmore Securities, Inc., Elliot Loewenstern, Michael Steinberg, and Richard Bronson are jointly and severally liable for, and shall pay to the Claimant the sum of \$520.00 as an award of the cost associated with the filing of this arbitration.

Each party shall bear its own costs and expenses, including attorneys' fees, except as set forth in this award.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) regular sessions x \$400 = \$800 and two (2) pre-hearing conference sessions x \$300 = \$600 or a total of \$1,400 in forum fees. Pursuant to §43(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Biltmore Securities, Inc..

Additional forum fees in the amount of \$300 are assessed against the Claimant.

Additional forum fees in the amount of \$700 are assessed jointly and severally against Respondents Biltmore Securities, Inc., Elliot Loewenstern, Michael Steinberg, and Richard Bronson.

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

Dated:

Robert E. Fitzgerald, Jr.  
Robert E. Fitzgerald, Jr.  
Public Arbitrator, Presiding Chair

s/s

January 10, 1996

Leah M. Balk, Esq.  
Leah M. Balk  
Public Arbitrator

s/s

January 10, 1996

Joseph E. Santaularia, Jr.  
Joseph E. Santaularia, Jr.  
Industry Arbitrator

s/s

January 16, 1996