

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mehdi Kazemi

95-00911

Name of Respondents

Joseph Roberts & Co., Inc.  
Steve Toscano

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 21, 1995, Claimant, Mehdi Kazemi, who appeared Pro Se, alleged that Respondents, Steve Toscano ("Toscano") and Joseph Roberts & Co., Inc., acted with gross negligence when he purchased 2,000 shares of Blue Chip ComputerWare, Inc., without prior consent on October 19, 1994. Claimant further alleged that Respondent Toscano had tried to sell him shares of this company a few days earlier, starting with 25,000 and coming down to 2,000, at which point Claimant requested more information before proceeding further. Claimant contended that he was shocked to receive a confirmation for the purchase of 2,000 shares of this stock with the maximum commission rate allowable by the SEC, and that Respondent Toscano was unavailable for a few days, but when he was able to reach him, he was told not to worry since Respondent Toscano knew the CEO of Blue Chip and further that the company is small and the price of the stock could be controlled by Joseph Roberts & Co., Inc., as they were "like a whale in the pond". Claimant contended that he told Toscano that he did not have the money to cover the transaction and was told that they would give him a two week extension to pay the bill. Claimant further contended that as the stock declined, he found out that his shares were purchased at the high and he called Toscano to complain and subsequently, Toscano hung up on him and refused to take any calls, locking Claimant in with the stock as it fell from \$6.00 to \$2.00, at which point Claimant transferred his account to another brokerage company.

Respondents, Joseph Roberts & Co., Inc. and Steve Toscano, through their in-house counsel, Douglas E. Arend, Esq., maintained that Toscano did contact Claimant and recommend purchasing the stock Blue Chip, and that after discussing the company and Claimant's financial profile, it was jointly agreed that a quantity of 2,000 shares would be appropriate for Claimant to purchase. Respondents further maintained that if Claimant sought more information about the company before making a decision, any discussion regarding quantity to be purchased would have been delayed until Claimant agreed to undertake some form of investment in the company. Respondents contended that any prior transaction executed by Claimant through Respondents were not recorded, this policy was not instituted until after

these transactions occurred. Respondents further contended that payment by Claimant of the transaction evidences conclusively the approval by Claimant of the transaction. Respondent Toscano denied making representations to Claimant to the effect that Joseph Roberts & Co., Inc., could control the price, rather Toscano contended that he discussed price objectives with Claimant and that Claimant authorized and subsequently paid for the purchase. With respect to Claimant's contention that Respondents charged the maximum commission rate allowable, they contended that Claimant was charged less than the 5% guideline adopted by the NASD. Respondents alleged that Claimant admitted attempts to speak with Toscano to limit his losses, are an admittance on Claimant's part of his authorization of the transaction.

In his response to Respondents' Answer, Claimant requested that the information with regard to his income and savings be disregarded as inaccurate. Claimant reiterated that he did not authorize the trade in question and that he did expect the conversation to be recorded when a trade was discussed, and further that he was not made aware of Toscano's departure from the firm until he received his January 30, 1995 statement, after he had already transferred his account to another company. Furthermore, Claimant pointed out that the New York office of Joseph Roberts & Co., Inc., closed down in February of 1995, and that Toscano did not go with the remaining brokers to Chicago.

In their Supplemental Answer to Claimant's Response to Respondents' Answer, Respondents contended that if the information furnished by Claimant with regard to his salary and savings were incorrect he should not be allowed to claim such error as a basis for this forum ignoring the stated information, as Respondents were entitled to rely on representations of Claimant and in fact did rely in accepting an account for Claimant. Respondent again denied receiving or not returning Claimant's phone calls. Respondent maintained that the registered representative who took over Claimant's account after Toscano's departure, did call Claimant in early January and advised Claimant that he would be handling his account from then on and that Claimant requested the representative to furnish him with some stock price quotes. Respondents contended that all reference to Claimant's "other underlying issues" regarding Toscano's departure and the closing of the New York branch are speculative, unfounded and irrelevant.

In Claimant's Second Response to Respondents' Supplemental Answer, Claimant maintained that he did not furnish any information to Joseph Roberts & Co., Inc. other than his name and Social Security number and that there were no misrepresentations on his part. He further maintained that he did not have any conversations with any Joseph Roberts & Co., Inc. representatives during the months of December of 1994 and January of 1995. Claimant asserted that he has documents that pertain to Joseph Roberts & Co., Inc., mishandling of clients accounts that are still pending in the courts and did not see fit to include them as they were not directly related to his case.

**RELIEF REQUESTED**

Claimant, Mehdi Kazemi, requested \$8,772.00 in actual damages as well as interests, fees and other costs.

Respondents, Steve Toscano and Joseph Roberts & Co., Inc., 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, John J. Phelan, III, P.C., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant, Mehdi Kazemi, on February 16, 1995 and by the Respondents, Steve Toscano and Joseph Roberts & Co., Inc., on March 23, 1995.

And, 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. Respondents, Joseph Roberts & Co., Inc. and Steve Toscano, are jointly and severally liable and shall pay to Claimant, Mehdi Kazemi. \$1,500.00 in actual damages.
2. Claimant's request for interest is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Mehdi Kazemi, shall be retained by the NASD, Inc. Respondents, Joseph Roberts & Co., Inc. and Steve Toscano, are jointly and severally liable and shall pay to the Claimant \$75.00 as reimbursement of one-half of the filing fee.

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Award

AFFIRMATION

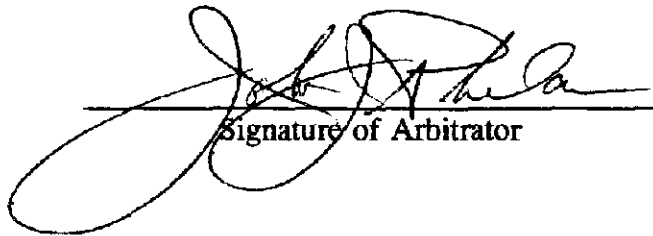
STATE OF NEW YORK

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SS:

COUNTY OF NEW YORK

I, JOHN J. PHELAN, do hereby affirm upon my oath as arbitrator that I am  
the individual described herein and who executed this instrument, which is my award.

  
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Signature of Arbitrator

DATE OF DECISION: November 16, 1995