

**NASDR AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Names of Claimants

Lamar Neill and Rose Neill

and

Case No. 95-01197

Names of Respondents

William J. Thomas, T.L. Smith Securities, Inc.  
Louis N. Dunklin, Texas Securities, Inc.,  
David A. Yarbrough, Sara B. Sharpe,  
Joseph E. Spencer, Lee D. Hobbs,  
Paul J. Ellenburg, Southwest Securities, Inc. and  
James N. Beatty

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**REPRESENTATION OF PARTIES**

Claimants, Lamar Neill and Rose Neill were represented by Jeffrey B. Moore, Esq. of Friday, Eldredge & Clark located in Little Rock, AR.

Respondent, William J. Thomas was represented by William P. Weir, Esq., Sole Practitioner, located in Fort Worth, TX.

Respondents, David A. Yarbrough and Joseph E. Spencer were represented by Jill I. Ivancevich, Esq., Sole Practitioner, located in Dallas, TX.

Respondent, Sara B. Sharpe did not appear at the hearing but filed an answer pro se'.

Respondent, Lee D. Hobbs appeared pro se'.

Respondent, Southwest Securities, Inc. was represented by Will S. Montgomery, Esq. and Tim Goodwin, Esq. of Jenkins & Gilchrist located in Dallas, TX.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 9, 1995.

The Submission Agreement of Claimants, Lamar Neill and Rose Neill was signed on February 7, 1995.

The Statement of Answer of Respondent, William J. Thomas was filed on or about June 20, 1995.

An Amendment to the Answer of Respondent, William J. Thomas was filed on or about October 10, 1995.

A Second Amendment to the Answer of Respondent, William J. Thomas was filed on or about October 26, 1995.

The Submission Agreement of Respondent, William J. Thomas was signed on June 15, 1996.

The Statement of Answer of Respondent, David A. Yarbrough was filed on or about May 3, 1995.

The Motion to Dismiss of Respondent, David A. Yarbrough was filed on or about April 29, 1996.

The Submission Agreement of Respondent, David A. Yarbrough was signed on May 3, 1995.

The Response to the Motion to Dismiss of David A. Yarbrough was filed by the Claimants, Lamar and Rose Neill on or about May 22, 1996.

The Statement of Answer of Respondent, Joseph E. Spencer was filed on May 3, 1995.

The Motion to Dismiss of Respondent, Joseph E. Spencer was filed on or about April 29, 1996.

The Submission Agreement of Respondent, Joseph E. Spencer was signed on May 3, 1995.

The Response to the Motion to Dismiss of Joseph E. Spencer was filed by the Claimants, Lamar and Rose Neill on or about May 22, 1996.

The Statement of Answer of Respondent, Sara B. Sharp was filed on or about August 7, 1996.

The Statement of Answer and Motion to Dismiss of Respondent, Southwest Securities, Inc. was filed on or about June 7, 1995.

The Amended Answer and Motion to Dismiss of Respondent, Southwest Securities, Inc. was filed on or about July 11, 1995.

The Submission Agreement of Respondent, Southwest Securities, Inc. was signed on June 27, 1995 by Jerome S. Wade, Vice President and General Counsel.

The Response to the Motion to Dismiss of Southwest Securities, Inc. of the Claimants, Lamar and Rose Neill was filed on or about July 13, 1995.

The Reply in Support of the Motion to Dismiss of Respondent, Southwest Securities, Inc. was filed on or about August 28, 1995.

The Statement of Answer of Respondent, Lee Hobbs was filed on or about June 20, 1995.

The Motion to Dismiss of Respondent, Lee Hobbs was filed on or about June 20, 1995.

The Second Motion to Dismiss of Respondent, Lee Hobbs was filed on or about May 6, 1996.

The Submission Agreement of Respondent, Lee Hobbs was signed on June 20, 1995.

### **HEARING INFORMATION**

The hearing was held in Little Rock, AR on August 27, 1996 for two (2) sessions and on August 28, 1996 for two (2) sessions.

### **CASE SUMMARY**

In the Statement of Claim, Lamar Neill and Rose Neill ("Claimants") alleged that William J. Thomas ("Thomas") contacted them by telephone in February of 1993 recommending the purchase of common shares of Goldrush Casino and Mining Corporation ("Goldrush"). As alleged, Thomas had obtained the Claimants's name through Kim Hart, Vice President of Goldrush, who Claimants approached pursuant to an advertisement. Thomas allegedly described Goldrush as a profitable investment and informed Claimants that Goldrush had all building permits necessary to begin construction. As alleged, Claimants purchased 4,000 shares of Goldrush on March 26, 1993 for a total of \$11,374.94 following repeated recommendations from Thomas. Thomas allegedly continued to contact Claimants to promote Goldrush and, on approximately May 1, 1993, said Goldrush had negotiated a five million dollar private placement which would provide financing for construction and initial operations and stated that Goldrush would register on NASDAQ in the near future. Claimants purchased an additional 16,660 shares of Goldrush on May 5, 1993, May 7, 1993, May 19, 1993 and May 27, 1993 for total of \$150,165.73 based allegedly on Thomas' recommendations. After viewing a television show criticizing casino stocks, Claimants allegedly contacted Thomas on June 1, 1993 instructing him to sell all of the Claimants's shares of Goldrush which was trading at \$16.00 per share. According to the Claimants, Thomas refused to place the sell order stating that such a sale would crash the market. The Claimants alleged that they did not have the stock certificates or they would have effected the sale through another broker. Claimants further alleged that Thomas owned shares of Goldrush and refused the sell order due to the potential detrimental effect upon his own portfolio. Upon receipt of the certificates in or after October of 1993, Claimants

allegedly sold the stock at a depressed price for a total of \$59,368.88 representing an out-of-pocket loss of \$102,171.79 and loss of the benefit of the bargain in the amount of \$169,019.33. Claimants contended that Goldrush was a classic penny stock fraud in which Thomas, Texas Securities, Inc. ("Texas Securities") and Southwest Securities, Inc. ("Southwest") participated and received benefit. *Claimants further contended that Thomas failed to disclose to them that the bid and ask prices as listed on the Bulletin Board were not based upon real time transactions, the stocks coming from Vancouver, Canada were speculative and Goldrush was thinly traded. Southwest was the broker dealer performing clearing functions for Texas Securities, the introducing broker. As alleged, David A. Yarbrough ("Yarbrough") as a Vice President and Director of Texas Securities, Sara B. Sharpe ("Sharpe") as President and Director of Texas Securities, Joe Spencer ("Spencer") as a Director of Texas Securities and Lee Hobbs ("Hobbs") as a Director of Texas Securities, were control persons and by their actions or inactions in this matter, breached their fiduciary duties to the Claimants. The Claimants made other specific allegations against Thomas and the other Respondents including, but not limited to, violations of Rule 10b-5 of the Exchange Act of 1934, suitability, violations of Rule 15c-2, 15c-4, 15c-5, 15c-9, violations of Section 12(2) of the Securities Act of 1933 and sales of unregistered securities in violation of Section 5 of the Securities Act of 1933.*

Respondent, William J. Thomas denied the allegations set forth in the Statement of Claim. Thomas specifically stated Claimants made the purchases without recommendation from him. Thomas maintained that Claimants did not give him a sell order on or about June 1, 1993 yet placed only one sell order with him for 1500 shares on October 15, 1993 which was completed. Thomas asserted that the losses should be attributed to the Claimants' own judgement.

In their respective Statements of Answer, Joseph E. Spencer and David A. Yarbrough denied being control persons and denied having supervisory or managerial responsibilities at Texas Securities. Spencer and Yarbrough maintained that they were passive members of the board of directors, positions attained due to equity positions in Texas Securities common stock by family members. Spencer and Yarbrough denied having any knowledge of any of the activities of Thomas and denied ever having contact with Thomas or Claimants.

Respondent, Sarah B. Sharpe claimed that she had no knowledge or recollection of any facts related to a trade or an account of the Claimants and never communicated with the Claimants.

Respondent, Southwest Securities, Inc. denied the allegations asserted by the Claimants alleging that it complied with its duties under the clearing agreements and applicable rules of the national stock exchanges. In its motion to dismiss, Southwest claimed that it could not be liable to Claimants due to the facts that it owed no fiduciary duty to Claimants, Texas Securities was not an agent of Southwest, Southwest was not a control person of the introducing broker and Southwest was not liable for aiding and abetting any actions of Texas Securities.

Respondent, Lee Hobbs denied the allegation that he was a control person and denied having any supervisory or managerial responsibilities at the Fort Worth office. Hobbs maintained that his supervisory responsibilities as a branch manager included only the Midland, TX office. Hobbs

claimed to be a passive member of the board of directors. Hobbs denied ever having contact with Claimants.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$169,019.33 in compensatory damages as well as \$200,000.00 in punitive damages plus costs and attorneys' fees.

Respondent, William J. Thomas requested that the claims asserted against him be denied in their entirety.

Respondent, David A. Yarbrough requested the Claimants' Statement of Claim against him be dismissed and that he be awarded costs.

Respondent, Joseph E. Spencer asked that the Statement of Claim be dismissed and that he be awarded all costs.

Respondent, Southwest Securities, Inc. requested that all allegations against it be dismissed in their entirety and that it be awarded its' costs and attorneys' fees.

Respondent, Lee Hobbs requested that the Statement of Claim be dismissed and that he be awarded costs.

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

On or about July 12, 1996, Claimants submitted an order of dismissal with prejudice with respect to all of their claims against Respondent, Paul J. Ellenburg. By letters dated August 8, 1996 and August 23, 1996, Claimants withdrew with prejudice their claims against Respondents, T.L. Smith Securities, Inc. and Louis Dunklin, respectively. At the start of the hearing on August 27, 1996, Claimants announced that they had settled their claims against Respondent, James N. Beatty and orally indicated that they were dismissing with prejudice their claims against him. On or about January 10, 1994, Respondent, Texas Securities, Inc. filed bankruptcy in the United States Bankruptcy Court for the Northern District of Texas - Dallas Division under the Bankruptcy Code staying the Claimants' claims against it. At the hearing, Claimants proceeded with their claims against the remaining Respondents, William J. Thomas, David A. Yarbrough, Sara B. Sharpe, Joseph E. Spencer, Lee D. Hobbs, and Southwest Securities.

At the start of the hearing on August 27, 1996, Respondent, Southwest Securities, Inc. reasserted its motion to dismiss filed pursuant to Section 16 of the Code of Arbitration Procedure (the "Code"). After hearing oral arguments from the parties, the arbitrators determined that the motion was granted. Therefore, Southwest was dismissed with prejudice from this action. In addition, the

arbitrators deferred ruling on the other Respondents' motions to dismiss until the conclusion of the hearing.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent, Sara B. Sharpe has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASDR Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent, Sara B. Sharpe had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent, Sara B. Sharpe did not file with the NASDR a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, is 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 NASDR.

### **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. The Statement of Claim is hereby denied in its entirety and dismissed with prejudice;
2. The parties shall bear their own costs including attorneys' fees except for the forum fees and costs specifically enumerated herein; and
3. Any relief not specifically granted herein is hereby denied in its entirety.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session. There were four (4) sessions x \$750.00 = \$3,000.00 in forum fees. Pursuant to Section 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 Section 43(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASDR") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASDR by the Claimants, Lamar and Rose Neill. Respondent, William J. Thomas is hereby liable

for and shall pay to the NASDR the sum of \$750.00 in forum fees. Respondent, Sarah B. Sharpe is hereby liable for and shall pay to the NASDR the amount of \$1,500.00 in forum fees. Respondent, Southwest Securities, Inc. is hereby liable for and shall pay to the NASDR the \$350.00 member surcharge assessed in accordance with Section 45 of the Code.

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

Signed:

Dated:

Patrick Burrow, Esq.  
Patrick Burrow, Esq.  
Public Arbitrator, Presiding Chair

August 30, 1996

P. Drake Mann, Esq.  
P. Drake Mann, Esq.  
Public Arbitrator

September 4, 1996

Richard Bingham  
Richard Bingham  
Industry Arbitrator

August 30, 1996

Date served by the NASDR: September 4, 1996