

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

James Stoyanoff, and
Jamie Griffith,

Claimants.

v.

No. 95-03994

Texas Capital Securities, Inc., and
Joseph C. Klapesky,

Respondents.

REPRESENTATION OF PARTIES

James Stoyanoff, and Jamie Griffith ("**Claimants**") appeared on their own behalf.

Texas Capital Corporation, Inc., and Joseph C. Klapesky ("**Respondents**") were represented by Don Katz, of Texas Capital Securities, Inc., Houston, Texas.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about August 18, 1995. Claimants' Submission Agreement was signed on August 15, 1995.

Respondents' Statement of Answer was filed on or about September 28, 1995. Respondents' Submission Agreements signed on September 28, 1995. Respondents' Second Amendment/Third filed response was filed on or about October 27, 1995.

HEARING INFORMATION

Pursuant to the written agreement of the parties, the above-captioned case was changed from an arbitration requiring a hearing to a dispute submitted to a single arbitrator for decision on the parties submissions. The change was effective as of November 17, 1995, the date notice was sent to the parties regarding the selection of the selected arbitrator as well as the NASD's intention to submit the current dispute for decision on the documentary evidence submitted by the parties.

CASE SUMMARY

Claimants stated that on or about November 9, 1994 James Stoyanoff ("Stoyanoff") opened an account with Respondents. Claimants also stated that: Stoyanoff had transferred Crown Energy into the account, and that on or about January 11, 1995 Stoyanoff directed the sale of Crown Energy; on or about the same date, Stoyanoff was told about Exploration Co. ("TXCO"); after review of the prospectus and discussions with his daughter and son-in-law; and due to an indebtedness Stoyanoff owed to them from heart by-pass surgery he used the proceeds from Crown Energy to pay his debt, and his daughter and son-in-law used the proceeds to open account with Respondents and purchase 6200 shares of TXCO. Claimants alleged that: Respondents said Stoyanoff could transfer the Crown Energy proceeds from his account to his daughter's and son-in-laws' account so there would be no need to write a check; the matter was settled on or about January 20, 1995 by the sale of Crown Energy to pay Stoyanoff's debt to the Griffiths and the purchase of 6200 shares of TXCO by the Griffiths; the various transactions were not reversible by Respondents; Respondents made a market in TXCO; Respondents sold the fully paid for shares of TXCO out of the Griffiths' account without their authority to cover an error made by the Respondents; and based on the information given to Stoyanoff by the Respondents, Stoyanoff agreed to sell his Crown Energy for 1 1/16 to 1 per share.

In their joint Answer, Respondents, unless otherwise admitted therein, denied each and every allegation contained in the Statement of Claim. Respondents further stated that: A clerical error in the booking of a double reverse split was the cause of this unfortunate situation; they could not be held liable for the reinstatement of the purchase of 6200 shares of TXCO at zero cost; they would be glad to repurchase 6200 shares of TXCO if Claimants made payment for the shares; it was clear that there were no funds available for Claimants' purchase of TXCO; Respondents acted at all times in a manner to effect the wishes of their client and to meet their objectives; the purchase of TXCO was made with funds that would not have been available had the clerical error not been made; the error was an honest error with no intent to harm anyone; Stoyanoff had instructed Respondents to transfer the proceeds of the sale of Crown Energy to the Griffith's account; when the error was discovered the results of the repurchase left a debit in Stoyanoff's account the instructions to transfer the proceeds was no longer valid; and the TXCO in the Griffith's account was sold at a profit and the proceeds were returned to the Stoyanoff account to pay for the oversale of Crown Energy.

RELIEF REQUESTED

Claimants requested that the Griffiths should have 6200 shares of TXCO put back into their account at Respondents' cost, that the debt be removed from the Stoyanoff account, and for expenses incurred in filing this arbitration.

Respondent requested that: The arbitration be resolved without a hearing; Claimants be awarded his actual loss of \$804.40; and that they be awarded their costs for attending a hearing in Tucson, if a hearing is held.

OTHER ISSUES CONSIDERED & DECIDED

Based upon the written requests of the parties to this arbitration, the case was changed from a matter set for hearing before a single arbitrator, to a matter to be decided by a single arbitrator based on the documentary evidence submitted by the parties.

AWARD

After considering the pleadings, and the documentary evidence presented by the parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants James Stoyanoff, and Jamie Griffith shall retain the profit from TXCO in the amount of \$1,544.00.

Respondent Texas Capital Securities, Inc. is liable for, and shall pay to the Claimants the full loss caused by the clerical error in the amount of \$2,348.40.

Texas Capital Securities, Inc. is hereby directed to execute an order of the Claimants to purchase up to 6,200 shares of TXCO at no commission or charge to the Claimants within 90 days of the date of this Award.

Texas Capital Securities, Inc. is liable for, and shall pay to the Claimants the sum of \$275.00 as a return of filing costs to the Claimants.


Any claims/requests for relief not specifically covered in this Award are, and each of them, denied and dismissed with prejudice.

FORUM FEES

Pursuant to §43(c) of the NASD Code of Arbitration Procedure (the "Code"), the NASD shall retain the non-refundable filing fee in the amount of \$75 and shall retain as forum fees the hearing session deposit in the amount of \$200 previously deposited with the NASD by the Claimants. In addition, the NASD shall refund to the Claimants the sum of \$125.00 as a return of the excess hearing session deposit paid by the Claimants.

Pursuant to §45 of the Code, the NASD shall regain the member surcharge fee in the amount of \$100 previously paid by Texas Capital Securities, Inc..

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


Howard R. Gaines
Public Arbitrator, Presiding Chair

Dated:

12-21-95