

9608121

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Neil Davies

9504131

Name of Respondents

R.J. Forbes Group, Inc.
U.S. Clearing Corp.
Steven Lake

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Securities Dealers, Inc.

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REPRESENTATION

Claimant Neil Davies ("claimant") appeared pro se.

For Respondents R.J. Forbes Group, Inc. ("R.J. Forbes"), U.S. Clearing Corp. ("U.S. Clearing") and Steven Lake ("Lake") (collectively referred to as "respondents") appeared Ronald Krasda, of R.J. Forbes Group, Inc., located in Melville, New York.

CASE INFORMATION

The Statement of Claim was filed on August 28, 1995.

Claimant's Submission Agreement was signed on August 9, 1995.

A Joint Statement of Answer was filed by Respondents on October 17, 1995.

Respondent U.S. Clearing Corp.'s Submission Agreement was signed on October 18, 1995.

Respondent R.J. Forbes Group, Inc.'s Submission Agreement was signed on October 17, 1995.

Respondent Steven Lake's Submission Agreement was signed on October 17, 1995.

HEARING INFORMATION

Hearing Dates/Sessions: July 3, 1996 - One Session

The hearing was held at the Raddison Hotel in Buffalo, New York.

CASE SUMMARY

Claimant alleged that on December 27, 1994 he purchased, through R.J. Forbes, 500 common shares of Chiron Inc. ("Chiron") at \$79.50 per share, for a total cost of \$39,785.00. Claimant further alleged that on January 3, 1995, Steve Lake, an employee of R.J. Forbes, phoned him and informed him that there was a stock tender offer (the "Offer") on Chiron that may have expired, but he would "try to get in" if it had not expired and if Claimant so desired. Claimant asserted that Steve Lake informed him that a company was offering \$117.00 per share for 87% of Chiron's outstanding shares, and that he did not say it was a cash offer or that it was not a formal share swap. Claimant further asserted that because respondent Lake did not say that Offer was for cash, he assumed it was a stock swap of sorts and asked him if the purchaser was a publicly traded company. Respondent Lake did not know the answer. Claimant also asserted that respondent Lake told him that he had two choices: he could keep his shares or tender them. Furthermore, respondent Lake emphasized that he did not know anything more about the Offer, nor was he experienced or particularly conversant in that area. Claimant contended that being forced to make an on-the-spot decision, he decided to stay with what he knew, which was that Chiron, Inc., was a publicly traded company whose stock to that point was firm and had been trading upwards and not showing any appreciable weakness. Therefore, Claimant chose to retain his 500 shares of Chiron and not to tender.

Claimant alleged that on January 4, 1995 Chiron opened at \$60.00 per share. Claimant sold his 500 shares at \$60.00 per share and received a total of \$26,965.00; thereby incurring a loss of \$9,820.00 after commissions.

Claimant alleged that respondents R.J. Forbes and Lake were negligent because either they did not understand the offer and give him reasonable time to consider it; or if they did understand the Offer, they were culpable in giving Claimant vague, inconclusive and misleading verbal information and in employing a procedure that was against his investment objectives. Claimant further alleged that the procedures should have been an automatic tender, unless otherwise instructed by the client, in a phone call initiated by the client. Claimant also alleged that R.J. Forbes, U.S. Clearing Corp. and Lake should pay the specified damages for not sending him tender materials or informing him in a proper adequate and timely manner, for not calling him at a reasonable time and for not informing him at his earliest opportunity considering the importance of this matter.

Respondents denied all allegations of wrongdoing asserted against them. Respondents maintained that Claimant, upon opening an account with respondent R. J. Forbes on February 27, 1993, entered into an agreement whereby he acknowledged that respondent R.J. Forbes "does not provide investment, tax or legal advice, nor does it provide advice or recommendations pertaining to the suitability, profitability or investment strategy in connection with any security or investment." Respondents further maintained that its adherence to this

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contractual premise is fundamental to its existence as a pure "discount broker" and the sole reason it is able to offer execution services at rates that are far below full service brokers. Respondents also maintained that when Claimant chose to take advantage of respondent R. J. Forbes' deeply discounted commission rates, he acknowledged respondent R.J. Forbes's role as being limited to execution services only and, therefore, he is estopped from now claiming that respondent R.J. Forbes failed to advise him relating to the appropriate course of action during a tender offer. Respondents also maintained that since Claimant did not become a stockholder of record until January 3, 1995 the final date of the tender offer, no notices were required to be forwarded to him nor could such notices be forwarded at a later date. Furthermore, despite a lack of any legal obligation to do so, Respondent Forbes orally advised Claimant of the existence of a tender offer, but declined to render an opinion as to the course of action Davies should pursue. Respondents contended that Claimant made his own determination and cannot hold respondents responsible if, in retrospect, his decision is not to his liking.

Respondents further contended that although Davies alleged that he suffered losses of \$9,280.00 due to respondent's refusal to render investment advice, Claimant has not, however, made any offer of proof that if he had tendered the subject shares, they would have been accepted by the offeror. Respondent also contended that Claimant's alleged damages are illusory, unsupported by evidence and are not the proper subject for consideration in arbitration.

RELIEF REQUESTED

Claimant requested a total of \$29,754.60 from respondents consisting of \$9,820.00 in actual damages, \$294.60 in interest (6% for six months), \$18,640.00 in punitive damages and \$1,000.00 in compensation for the time spent in preparing this case, including expenses.

Respondents requested that Claimant's demand for damages be dismissed in their entirety and that all costs in this proceeding, including respondent's attorney fees, be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain 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:

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1. All Claims against Respondents be and hereby **are** denied.
2. All claims for punitive damages be and hereby are denied.
3. Each party shall bear their respective costs, including representation fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee and the \$300.00 hearing session deposit.

ARBITRATORS' SIGNATURES


Philip Marshall, Esq.
Public Chairperson

I, **PHILIP MARSHALL, ESQ.**, do hereby affirm pursuant to Article 7505 of the Civil Practice Law & Rules, that this is my decision in the above-captioned matter.


Philip Marshall, Esq.

DATE OF DECISION: August 12, 1996