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**NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Roger L. Belger

Claimant,

v.

No. 9504347

Rauscher Pierce Refsnes, Inc.

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Securities Dealers, Inc.

Respondent.

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**REPRESENTATION OF PARTIES**

Claimant Roger L. Belger represented himself.

Respondent Rauscher Pierce Refsnes, Inc. was represented by Sharon J. Shumway, Esq. of Rauscher Pierce Carrington, Coleman, Sloman &amp; Blumenthal located in Dallas, TX.

**CASE INFORMATION**

Claimant Roger L. Belger ("Claimant") filed his Statement of Claim on or about October 10, 1995.

Claimant's Submission Agreement was signed on September 7, 1995.

Respondent Rauscher Pierce Refsnes, Inc.'s ("Respondent") Statement of Answer was filed on or about January 5, 1996.

Respondent's Submission Agreement was signed on December 4, 1995 by James T. Ritt, First Vice President of Rauscher Pierce Refsnes, Inc.

**INFORMATION**

The hearing was held on June 18, 1996 in Dallas, TX for a total of two (2) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent made unauthorized trades in his account. He further alleged that although the confirmations he received were marked "unsolicited", he never authorized the trades in stocks including Southwest Airlines, Magara Mohawk Power Corporation, and Seitel Incorporated.

Respondent denied the allegations set forth by Claimant. Respondents specifically stated that none of the transactions made to Claimant's account were without his authorization. Respondent contends that Claimant received and understood the confirmation slips sent to him after each transaction. Respondent further alleges that Claimant was an experienced investor, was aware of the financial outcome and costs of his investments in connection with each transaction, and would not have continued to trade on his account for five months without any notification of displeasure. Respondent made the following affirmative defenses: (1) Claimant fails to state a claim upon which relief can be granted; (2) Claimant has waived or is estopped from asserting his claims, and Claimant ratified all acts or omissions by Respondent of which he complained of; (3) Claimant's negligence proximately caused the allegedly unauthorized transactions; and (4) Claimant has failed to mitigate his damages.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$38,471.34 in compensatory damages plus interest.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

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

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 :

- (1) That all claims brought by Claimant Roger L. Belger are denied with prejudice;
- (2) That other than forum fees, which are addressed below, all other relief 'not specifically awarded are hereby denied.

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**FORUM FEE**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) hearing sessions x \$400 = \$800 -in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a **prehearing 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 Claimant Roger L. Belger.

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

Additional forum fees in the amount of \$400 are assessed against Claimant Roger L. Belger.

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

Dated:

/s/Alice A. Waters

8/6/96

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Alice A. Waters, Esquire  
Public Arbitrator, Presiding Chair

/s/ A. Marvin Roscoe, Jr.

August 6, 1996

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A. Marvin Roscoe, Jr.  
Public Arbitrator

/s/ Sheldon F. Schobert

8/7/96

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Sheldon F. Schobert  
Industry Arbitrator

For Use by the NASD  
Date of Service by the NASD: August 8, 1996