

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Aaron Rosenberg

96-00573

Name of Respondents

Toluca Pacific Securities Corp.  
James B. Hancock, Jr.  
Moe Silver  
Mike Procak  
Trish Sandberg  
Paul Fiorini

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealer, Inc. on February 7, 1996, Claimant Aaron Rosenberg ("Claimant"), who appeared Pro Se, alleged that Respondents Toluca Pacific Securities Corp. ("Toluca"), James B. Hancock, Jr. ("Hancock"), Moe Silver ("Silver"), Mike Procak ("Procak"), Trish Sandberg ("Sandberg") and Paul Fiorini ("Fiorini") (collectively referred to as "Respondents") failed to execute a trade as instructed and inadequately handled his complaint arising therefrom. Claimant further alleged that on August 14, 1995, Hancock, his broker, failed to sell 1,500 common stock shares of Kushi Macrobiotics Corp ("Kushi") as requested. Claimant asserted that Hancock called him back and informed him that he had sold Kushi warrants and common stock contrary to his instructions. Claimant further asserted that he received the written confirmation slip for the warrants from the clearing agent but nothing for the common stock. Claimant contended that on August 18, 1995, he received a fax copy of the sell tickets of the common stock shares from Hancock, instead of a written sale confirmation. Claimant further contended that in August of 1995, Hancock failed to wire his funds to his checking account as requested.

Claimant alleged that on August 22, 1995, he called Silver, the compliance officer, and discovered that the common stock shares had not been sold. Claimant further alleged that after he signed a release, Silver inaccurately informed him that the common stock shares were sold at \$5 1/2.

Claimant asserted that upon realizing that he still owned the common stock shares of Kushi, he called Procak, the branch manager, who stated that the common stock was sold and referred him to Sandberg for more details.

Claimant further asserted that further attempts to resolve his problem were unsuccessful because both Sandberg and Fiorini refused to speak to him.

Claimant contended that he was only able to sell his shares of Kushi common stock at \$4 5/8 on August 29, 1995 after he transferred his account to another firm. Claimant further contended that due to the wrongdoing of the Respondents, he suffered damages, for which they should be held liable.

Respondent Moshe Silver ("Silver"), who appeared Pro Se, maintained that Hancock gave an erroneous verbal report to Claimant that the sale of Kushi common stock shares was executed at \$5 1/2 a share. Respondent Silver further maintained that the Claimant was an experienced investor who yelled and was verbally abusive by accusing him of personally defrauding the Claimant. Respondent Silver contended that the Claimant continued to threaten the firm with abusive comments even after the firm agreed to sell his shares at the higher price if he would sign a release. Respondent Silver further contended that after he obtained the release, he called Respondent Fiorini and told him that he was selling Claimant's shares at \$5 1/2 a share, and instructed him to inform the Claimant that this was being executed. Respondent Silver maintained that the abusive phone calls and the original trade date, all occurred before he began to work at the firm. Respondent Silver further maintained that he committed no wrongdoing and therefore, the claim against him should be dismissed.

Respondent Trish Sandberg ("Sandberg"), through her representative Eugene W. Bell, Esq., of Jones, Bell, Simpson, Abbott, Fleming and Taylor, located in Los Angeles, California, maintained that she was not involved in the conversation which took place on August 23, 1995, and was named in this proceeding because of the position she held at Toluca and resigned from the firm before the claim in this matter was initiated. Respondent Sandberg further maintained that the East Coast Compliance Officer at the firm was responsible for personally investigating and resolving customer complaints and rarely needed her assistance. Respondent Sandberg contended that when the Claimant called her with his problem she realized that the broker in charge worked out of the East Coast firm and advised the Claimant that the firm had an East Coast Compliance officer who was responsible for resolving East Coast customer complaints. Respondent Sandberg further contended that after the phone conversation with the Claimant, she contacted Mr. Fiorini who informed her that the problem had been resolved. Respondent Sandberg maintained that she committed no wrongdoing and, therefore, the claim against her should be dismissed.

Respondent Toluca Pacific Securities, Corp. ("Toluca"), through its representative and in-house counsel, William Joseph, maintained that the Claimant's sell order did not go through because he had not paid for his purchase. Respondent Toluca further maintained that after receiving the funds, it entered orders to sell the warrants and common stock, but the order to sell the common stock was never executed. Respondent Toluca contended that when it discovered that the paperwork necessary for the correction of the trade was never completed, the Claimant had already transferred his account away from Toluca. Respondent Toluca further contended that New York law does not authorize punitive damages and the Claimant is not entitled to them. Respondent Toluca maintained that it committed no wrongdoing, therefore, the claims against it should be dismissed.

Respondent James B. Hancock, Jr. ("Respondent"), who appeared Pro Se, maintained that the Claimant gave an order to sell his position knowing that this was the first day of trading. Respondent further maintained that subsequent to submitting the sell order, the Claimant was informed that he had to pay for his purchase or else it would constitute free riding and would be placed on restriction. Respondent also maintained that he filled out the ticket for execution of the sell order and left the ticket in the care of the trader. Respondent contended that he assumed that the trade would be executed without a problem because he received authorization to request an execution. Respondent further contended that he resigned from the firm that week. Respondent also contended that he committed no wrongdoing, therefore, the claims against him should be dismissed.

Respondent Michael G. Procak ("Procak"), who appeared Pro Se, maintained that he only had one conversation with the Claimant which entailed the Claimant's request for the name of Mr. Silver's supervisor. Respondent Procak further maintained that he committed no wrongdoing and therefore, the claims against him should be dismissed.

Respondent Paul Fiorini failed to file an Answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant Aaron Rosenberg, requested \$1,312.50 in actual damages and \$8,500.00 in punitive damages.

Respondents Toluca Pacific Securities Corp., James B. Hancock, Jr., Moe Silver, Mike Procak, Trish Sandberg, requested that the claims of the Claimant be dismissed.

Respondent Paul Fiorini failed to file an Answer to the Statement of Claim.

### **OTHER ISSUES CONSIDERED AND DECIDED**

In accordance with Section 12 and 13 of the NASD Code of Arbitration Procedure, Respondent Paul Fiorini was served with a copy of the claim by regular mail and was given an opportunity to respond, which he failed to do. In addition, service of the notice of the Arbitrator's identity and the notice of overdue answer was effected as evidenced by the signed return receipt card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Paul Fiorini had notice of the claim, and was required to submit to this arbitration proceeding; and, is therefore, bound by the arbitrator's ruling and determination.

The arbitrator considered and reviewed all documentation submitted by the parties regarding Claimant's motion to bar Respondents Toluca Pacific Securities Corp., James Hancock, Jr., Moe Silver and Paul Fiorini from submitting their Statements of Answer as they were not filed in a timely fashion. The arbitrator denied the motion.

The Arbitrator did not consider the submission from Mike Procak dated September 12, 1996, as it was not filed in a timely manner.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Cynthia L. Boyce, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Aaron Rosenberg on February 20, 1996 and by the Respondent Trish Sandberg on April 2, 1996, Respondent Mike Procak on March 27, 1996, not by Respondents Paul Fiorini, Moe Silver, James B. Hancock, Jr., or Toluca Pacific Securities Corp. as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.


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. The claims of Claimant Aaron Rosenberg against Respondents James B. Hancock, Jr., Moe Silver, Mike Procak and Trish Sandberg are dismissed in their entirety.
2. Respondents Toluca Pacific Securities Corp. and Paul Fiorini are jointly and severally liable and shall pay to the Claimant Aaron Rosenberg \$1,312.50.

3. Respondents Toluca Pacific Securities Corp. and Paul Fiorini are jointly and severally liable and shall pay to the Claimant Aaron Rosenberg simple interest at the rate of 9% per annum from August 29, 1995, to the date of payment of the award.
4. All other reliefs requested are denied.
5. The parties shall bear their respective costs.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealer, Inc. by the Claimant Aaron Rosenberg shall be retained by the NASD, Inc. The Respondents Toluca Pacific Securities Corp. and Paul Fiorini are jointly and severally liable, and shall pay to the Claimant \$150.00 as reimbursement for the filing fee.

**AFFIRMATION**

I, **CYNTHIA L. BOYCE**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument, which is my award.

  
Cynthia L. Boyce

Date of Decision:      October 8, 1996