

NASD REGULATION, INC. AWARD**Office of Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

Chris and Louisa H. Starkey

Case No. 96-00873

Names of Respondents

Texas Capital Securities Inc.
Michael Ator

REPRESENTATION OF PARTIES

For Claimants: Robert B. Cook, Esq., North Palm Beach, Florida.

For Respondent Texas Capital Securities Inc. ("TCS"): Russell C. Burk, Esq., Englewood, Colorado until October 30, 1998 when Mr. Burk withdrew as counsel. Thereafter, TCS was not represented by counsel.

Respondent Michael Ator appeared *pro se*.

CASE INFORMATION

Statement of Claim filed: February 27, 1996 and amended December 16, 1996.
Claimants' Submission Agreement signed: February 21, 1996.

Joint Statement of Answer filed by Respondent TCS and Ator: April 19, 1996. Joint Response to Amended Statement of Claim filed: January 20, 1997. Respondents did not sign Submission Agreements.

HEARING INFORMATION

A telephonic pre-hearing conference was conducted on November 8, 1996 with the chairperson presiding.

A telephonic pre-hearing conference was conducted on April 7, 1998 with the panel presiding.

The evidentiary hearing lasting one session was conducted on November 2, 1998, in Boca Raton, Florida.

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CASE SUMMARY

Claimants alleged the following: Respondents sold them stock in Granite Limited, n/k/a Food Concepts, Inc. Prior to the sale and for three months thereafter, Respondents failed to disclose that the stock could not be immediately resold. Failure to disclose the restriction prior to the sale constituted a violation of the NASD Rules of Fair Practice. During the six months it took to clear the stock for sale, the market price dropped from \$5.00 to \$1.30 per share resulting in a loss to Claimants. Respondents also failed to execute a sell order for 1,000 shares of the stock. Further, Respondents made a defamatory statement to another brokerage firm regarding a "number of pending arbitrations against brokerage firms" by Claimants.

Respondents denied the allegations set forth in the Statement of Claim and specifically asserted the following: Claimants initiated the unsolicited purchase of Granite Limited and Respondents complied with Claimants' instructions. Mr. Starkey directed the Respondents to find the stock, did not ask Respondents to investigate the stock, and purchased the shares when located. Claimants were fully aware that they could not immediately resell the stock. Thereafter, Mr. Starkey entered a limit order for the sale of 1,000 shares of the stock, but the price was above market and the trade could not be executed.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the amount of \$41,950.00, interest, costs, and punitive damages to censure the slanderous behavior of the Respondents.

Respondents requested a dismissal of all claims, costs, and punitive damages in an amount equal to Claimants' damage request to discourage other frivolous arbitrations.

OTHER ISSUES CONSIDERED & DECIDED

1. On October 30, 1998, counsel for Respondent, Russell C. Burk, telephoned NASD Regulation, Inc. staff to advise that he would not attend the hearing in this matter due to TCS's inability to pay the defense costs associated with this matter. Mr. Burke confirmed that conversation by letter on the same date and withdrew as counsel for TCS. Mr. Burke advised staff that he had not been in contact with Respondent Ator for several months. The Respondents did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators determined that Respondents received due notice of the hearing as required under Rule 10315 of the NASD Code of Arbitration Procedure (the "Code") and that arbitration of this matter would proceed pursuant to Rule 10318 of the Code.

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2. Respondents did not file with NASD Regulation, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the Code and, having answered the claim and received due notice of the hearing, are bound by the determination of the arbitration panel on all issues submitted.

3. The Claimants 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 Claimants have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found liable, jointly and severally, and shall pay to Claimants damages in the amount of \$37,026.00, plus pre-award interest from January 1, 1996 to November 2, 1998 in the amount of \$10,489.00 for a total due to the Claimants of \$47,515.00.

2. Respondents, jointly and severally, shall pay to the Claimants the sum of \$500.00 representing reimbursement of the hearing session deposit previously made by the Claimants.

3. All other requests for damages including punitive damages, plus the requests for costs and fees are denied.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$1,300.00 (one chairperson pre-hearing conference @ \$300.00, one panel pre-hearing conference @ \$500.00, plus one hearing session @ \$500.00).

Respondents are assessed the sum of \$1,300.00, jointly and severally, for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof, leaving a balance due in the sum of \$800.00.

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OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent TCS has paid to NASD Regulation, Inc. the \$300.00 member surcharge which was previously invoiced.

Pursuant to Rule 10319 of the Code, Respondent TSC has paid to NASD Regulation, Inc. \$2,500.00 representing the adjournment fees for the hearings scheduled for November 25 and 26, 1996; March 24, 25 and 26, 1997; and, April 7, 8, and 9, 1998.

Pursuant to Rule 10319 of the Code, Claimants have paid to NASD Regulation, Inc. the \$500.00 adjournment fee for the hearing scheduled for April 30, May 1 and 2, 1997.

Pursuant to Rule 10332 of the Code, Claimants have paid to NASD Regulation, Inc. the \$150.00 claim filing fee. Claimants have also paid \$10.00 in administrative costs.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Steven N. Ainsbinder, Esq.
Public Arbitrator, Presiding Chair

/s/

Harold A. Greene, Esq.
Public Arbitrator

/s/

Bernard Finger
Industry Arbitrator

Date of Decision: 11-30-98