

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Stephen & Anita Taub

96-02259

Name of Respondents

Southwest Securities, Inc.  
Nationwide Securities Corp.

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on May 28, 1996, claimants Stephen and Anita Taub ("claimants") through their representative and counsel Robert J. Brockman a sole practitioner located in Oakland, California, alleged that respondents Southwest Securities Inc. ("Southwest") and Nationwide Securities Corp. ("Nationwide") breached their fiduciary duty by their failure and refusal to communicate with them. Claimants further alleged that on February 28, 1996, they were contacted by Michael Pardini ("Pardini") from respondent Nationwide's New York office. Claimants also alleged that Pardini sought to sell them IPO shares of Thermo-Mizer Environmental Corporation ("TMEC"). Claimants asserted that they paid a total of \$9,089.50 for both common stock and warrants of TMEC. Claimants further asserted that within a week after the trade, they sought to sell the shares of THEC. Claimants also asserted that when he called Pardini he could not be reached and after several attempts they were eventually told that he no longer was employed at Nationwide. Claimants contended that when they requested that someone else assist them with selling TMEC, no one at Nationwide was willing to do so. Claimants further contended that shortly thereafter Nationwide's New York office was closed down.

Claimants also contended that TMEC had not been qualified for sale in the state of California, and thus they were unlawfully sold the stock in the first place. Claimants alleged that they contacted Nationwide Fort Worth office, but their letters and calls were not returned.

Respondents Nationwide through its representative and counsel Jonathan A. Pace a sole practioneer, located in Dallas, Texas maintained that the shares were purchased by claimants on February 28, 1996, for \$9,089.50. Respondent Nationwide further maintained that when claimants became dissatisfied with the purchase they could have sold the shares through any stockbroker if they were unable to reach the individual broker who initially contacted them.

Respondent Nationwide also maintained that claimants had a duty to mitigate their damages and could have sold their securities for the same amount they purchased them for shortly after the offering. Respondent Nationwide contended that it is not responsible for claimants decision to hold the securities.

Respondent Southwest through its representative and counsel, Will Montgomery, of the firm Jenkins & Gilchrist, maintained that they did nothing more than clear trades for Nationwide. Respondent Southwest further maintained that the acts of Nationwide form a basis for claimant's claim and not the acts of it when clearing those trades. Respondents Southwest also maintained that it was not an agent of claimants, it was not the controlling person within the meaning of securities law and that they owed no fiduciary duty to claimants.

### **RELIEF REQUESTED**

Claimants Stephen and Anita Taub requested \$9,089.50, plus interest from February 1996, and attorneys' fees.

Respondent Nationwide requested that the claims of claimant be dismissed in their entirety.

Respondent Southwest requested that the claims of claimant be dismissed in their entirety, plus all costs and attorneys' fees.

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

The arbitrator considered respondent Southwest's request for dismissal and granted the motion.

### **AWARD**

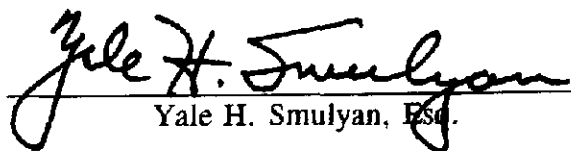
Pursuant to Section 10302 of the Code of Arbitration Procedure a single Public Arbitrator, Yale H. Smulyan, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimants Stephen and Anita Taub on May 20, 1996, and by respondent Nationwide on August 20, 1996 and not by respondent Southwest as required by Sections 10301 and 10302 of the 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 claimants Stephen and Anita Taub against respondents Southwest Securities, Inc. and Nationwide Securities Corp. are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited by the National Association of Securities Dealers Regulation, Inc. by claimants shall be retained by the NASD Regulation, Inc.

**AFFIRMATION**

I, **Yale Smulyan**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Yale H. Smulyan, Esq.

Date of Decision: December 10, 1996