

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Marie C. Steiger

NASD Arbitration  
No. 96-02411

Names of Respondents

Pacific Coast Financial Securities  
Sean T. Duran, Douglas Ashman,  
Kirt W. Ashman, Thomas Gans,  
Don Morandini

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REPRESENTATION

For Claimant Marie C. Steiger:

Peter Dion-Kindem, Esq., Buchanan & Kindem, P.C.

For Respondents:

A. No appearance at the June 17, 1997 Hearing Session by or for any Respondent. The panel has received from NASDR a copy of an April 9, 1997 letter from James L. Sanders of Sheppard, Mullin, Richter & Hampton LLP., noticing that "my firm has withdrawn as counsel for any of the Respondents in the subject action." Mr. Sanders and his firm had appeared on behalf of Pacific Coast Financial Securities Inc. and Mr. Duran, at the Pre-Hearing Telephonic Conferences.

B. At the October 13, 1997 Hearing Session (and at the August 12, 1997 Pre-Hearing Telephonic

Conference) Respondents Pacific Coast Financial Securities, Kirt Ashman, Thomas Gans and Don Morandini were represented by John C. Vita, Esq. There was no appearance on behalf of Respondent Douglas Ashman. Respondent Sean Duran appeared as a witness at the October 13, 1997 hearing session.

CASE INFORMATION

Statement of Claim filed: June 6, 1996;

First Amended Statement of Claim filed December 26, 1996;

Second Amended Statement of Claim filed February 25, 1997.

Claimant's Submission Agreement signed: June 4, 1996.

Statement of Answer filed by Respondent Pacific Coast  
Financial Securities, Inc.: July 29, 1996.

Respondent Pacific Coast Financial Securities Inc.'s  
Submission Agreement Signed: July 25, 1996

Statement of Answer filed by Respondent Sean T. Duran: July  
29, 1996.

Respondent Duran's Submission Agreement Signed: July 25,  
1996.

Statement of Answer Filed by Respondent Douglas Ashman:  
None.

Respondent Douglas Ashman's Submission Agreement filed:  
None.

Statement of Answer Filed by Respondent Kirt W. Ashman:  
None.

Respondent Kirt Ashman's Submission Agreement signed: None.

Statement of Answer Filed by Respondent Thomas Gans: None.

Respondent Thomas Gans' Submission Agreement signed: None.

Statement of Answer Filed by Respondent Don Morandini:  
None.

Respondent Don Morandini's Submission Agreement signed:  
None.

#### HEARING INFORMATION

Hearing dates/sessions: June 17, 1997 (two sessions) and  
October 13, 1997 (two sessions)

Hearing location: Los Angeles, California

Pre-Hearing Telephonic Conferences: February 13, 1997;  
February 19, 1997; April 7, 1997; August 12, 1997.

#### CASE SUMMARY

Claimant, a 73-year old widow, was "cold-called" by Respondent Duran, then a registered representative of Respondent Pacific Coast Financial Securities, Inc. Respondent Duran and Respondent Douglas Ashman, who identified himself as a vice-president of Respondent Pacific Coast Financial Securities, thereafter visited Claimant at her home. Claimant thereupon invested \$39,000 in Beacon Income Fund XVII, and \$10,000 in Beacon Income Fund XIX, for a total investment of \$49,000. Claimant testified, (and Respondent Duran denied) such Respondents had represented to Claimant that she would never lose money investing in those

funds; that such investments were safe, and that her annual income from those investments were "guaranteed" for her lifetime and for her family thereafter. Claimant received income payments sporadically and in varying amounts until February, 1996 of \$11,041.04, which payments thereafter ceased. It appears that both such funds have ceased business. It also appears that the individual Respondents were each principals of, and/or employees of, the parent company of such funds, which fact was not disclosed to Claimant by any of such Respondents.

It was reported in the press, prior to the initial hearing session, that Respondent Pacific Coast Financial Securities, Inc. has ceased business.

#### RELIEF REQUESTED

Claimant's requested damages include her alleged capital loss of \$49,000, plus interest to date at the legal rate of 10% per annum of \$16,253.16 (\$65,253.16), less total payments received from such funds of \$8,292.70, for an aggregate loss on the investments of \$56,960.46; together with attorneys' fees incurred to date of \$5,500, and costs expended in connection with this action of \$1,656.29. The total of the foregoing requested damages are thus: \$64,116.75. Punitive damages are also requested.

SETTLEMENT WITH RESPONDENT DURAN

Counsel for Claimant has informed the Panel that Claimant, prior to, the June 17, 1997 hearing session, had entered into a stipulated Settlement Agreement with Respondent Sean T. Duran for an aggregate sum of \$25,000, of which \$14,671.93 had been paid as of October 13, 1997, reducing the sum owed by such Respondent on such Settlement Agreement to \$10,328.07.

SPECIAL FINDINGS

The undersigned Arbitrators submit the following findings with respect to this Award:

- A. (1) Respondents Pacific Coast Financial Securities, Inc., and Sean T. Duran were duly served with the Initial Statement of Claim.
- (2) Respondents Douglas Ashman and Kirt W. Ashman were each duly served with the First Amended Statement of Claim.
- (3) Respondents Thomas Gans and Don Morandini were each duly served with the Second Amended Statement of Claim.
- (4) Respondents Douglas Ashman, Kirt W. Ashman, Thomas Gans, and Don Morandini are each in default, in having failed to file pleadings and/or Submission Agreements herein.

B. The arbitrators are making their Award upon the evidence produced notwithstanding the failure to appear at the hearing of any Respondent other than Mr. Duran, or of any counsel on behalf of Respondent Douglas Ashman.

C. Sufficient evidence was introduced to reflect that each Respondent had a duty to state material facts with respect to the securities purchased by Claimant; that material misrepresentations were made to Claimant by each Respondent; and that each Respondent omitted to state material facts, which should have been stated to Claimant in order to make what was stated or presented to her, not misleading.

D. It was apparent from the evidence that Claimant is unsophisticated in securities matters; that she believed the misrepresentations that were made to her; and on the basis of her sophistication and prior investment experience she did not then understand the speculative nature of her investments.

E. It was apparent from the evidence that the securities sold to Claimant were unsuitable for her.

F. No evidence was introduced with respect to any showing that Respondent Pacific Coast Financial Securities, Inc. exercised any supervision over the individual Respondents with respect to the misrepresentations made and allowed to be made by them to Claimant.



G. Such misrepresentations including omissions to state material facts, made to Claimant by each Respondent, were intentionally made (or omitted to be made) and were fraudulent.

### 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 as follows:

1. In satisfaction of Claimant's claims, Respondents Pacific Coast Financial Securities, Inc., Douglas Ashman, Kirt W. Ashman, Thomas Gans and Don Morandini, are jointly and severally liable for and shall pay to Claimant the sum of \$57,737.52 (\$72,409.45 minus \$14,671.93 paid by Duran), together with interest computed at the legal rate of 10% per annum on the unpaid balance from October 13, 1997 until date of payment of this award in full.

2. The arbitration panel recognizes the Settlement Agreement heretofore made by Claimant with Respondent Duran, approves the same, and orders that any further payments made to Claimant by such Respondent may be credited against the unpaid balance of the monetary award made herein.

FORUM FEES

Pursuant to Section 43(C) of the Code of Arbitration Procedure, the following forum fees are assessed:

A. The N.A.S.D. shall retain \$400 hearing session continuance fee previously deposited by Claimant. Such sum is included in the amount of the Award to be paid to Claimant by Respondent.

B. Respondents Pacific Coast Financial Securities, Inc., Sean T. Duran, Douglas Ashman, Kirt W. Ashman, Thomas Gans, and Don Morandini, are jointly and severally assessed the following Forum Fees:

Initial filing fee:	\$400
2 Telephonic pre-hearing conference fees @ \$300:	600
Continuance fee	400
Total due:	<u>\$1,400</u>

ARBITRATOR

Name

Public/Industry

Marvin Greene, Esq.

Public Arbitrator

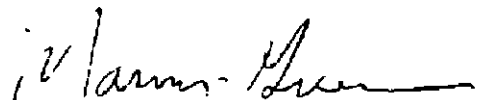
Lawrence J. Berkowitz, Esq.

Public Arbitrator

David D. Holt

Industry Arbitrator

Presiding Arbitrators' Signatures



Marvin Greene, Esq.

Lawrence J. Berkowitz

David D. Holt

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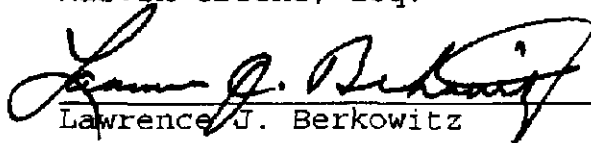
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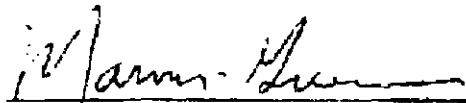
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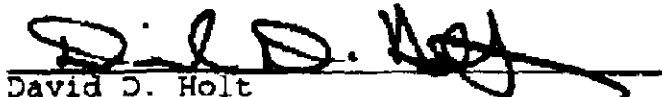
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David D. Holt

Date of Service: NOVEMBER 20, 1997