

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Craig G. Griffeth

96-02899

Name of Respondents

Hubert-Rosche Securities, Ltd.  
Buttonwood Securities, Inc.  
Michael Lipkin

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 8, 1996, claimant Craig G. Griffeth ("claimant"), through his representative and counsel, Julian D. Jensen, Esq., of the law firm Jensen, Duffin, Carman, Dibb & Jackson located in Salt Lake City, Utah alleged that claimant became a "securities customer" of respondents Buttonwood Securities, Inc. ("Buttonwood") and Hubert-Rosche Securities, Ltd. ("Hubert-Rosche"), who acquired claimant's account as the successors to respondent Securities Planners, Inc. ("Securities Planners"). Claimant further alleged that on or about early February, 1994 he was solicited by Securities Planners and induced to purchase 1,000 shares of Telefonica de Argentina. Claimant also alleged that respondent Michael Lipkin ("Lipkin") was the account representative who was retained, associated with, or employed by Hubert-Rosche at the time of the securities transactions complained of in the claim. Claimant alleged that in Spring 1995 the monthly statements indicated that the name of the firm had changed to Buttonwood Securities, with Hubert-Rosche as the branch office and Lipkin as the broker.

Claimant alleged that in November 1995 he received confirmation of an unauthorized sale from his account of his Telefonica de Argentina stock on or about October 25, 1995. Claimant further alleged that concurrently, he received a confirmation of "an authorized" purchase of Command Credit Corporation stock. Claimant also alleged that on November 17, 1995 through January 1996 he complained in an attempt to get the unauthorized transactions reversed. Claimant averred that he received numerous assurances from agents of the respondents, including Joshua Shainberg ("Shainberg"), that the transactions would be reversed. Claimant asserted that despite repeated attempts and efforts, he was unable to talk directly to Lipkin who was represented on the monthly statements as his account representative. Claimant contended that none of the principals of Buttonwood and Hubert-Rosche disputed that there were unauthorized transactions in the account and indicated that the matter would be resolved at no cost to claimant. Claimant further contended that for the first time, in February 1996, Shainberg denied that Hubert-Rosche was responsible for the unauthorized trading. Claimant is seeking an arbitration award against each of the respondents jointly and severally.

Respondent Hubert-Rosche Securities, Ltd failed to file a Statement of Answer.

Respondent Buttonwood Securities, Inc. failed to file a Statement of Answer.

Respondent Michael Lipkin, through his representative and counsel, Maranda E. Fritz, Esq., of the law firm, Fritz & Miller, located in New York City, denied that he directed or authorized the sale of Telefonica de Argentina or the purchase of Command Credit Corporation in the claimant's account. Lipkin maintained that claimant failed to allege that he engaged in solicitation or spoke to him. Lipkin further maintained that the claim alleged solicitation being made by Securities Planners in February 1994, prior to any association between him and/or Hubert-Rosche and Securities Planners. Lipkin also maintained that claimant failed to state a claim against him and is not entitled to an award as claimant never spoke to him, and is unable to determine the specific individual who is responsible for effecting the unauthorized transactions in his account.

### **RELIEF REQUESTED**

Claimant Craig G. Griffeth requested (1) actual damages of \$7,829.85, or as otherwise determined by the Arbitrator (2) exemplary or punitive damages, or treble damages under Utah law, in excess of actual damages but limited to \$10,000.00, for the purpose of Simplified Arbitration (3) Attorneys fees pursuant to Utah law and Attorney's Affidavit (4) Filing and forum fees (5) Interest at the rate of 12% per annum from October 25, 1995 until paid, and (6) Other relief as determined by the Arbitrator.

Respondent Michael Lipkin requested dismissal of all claims against him, and other relief as may be just and proper.

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

The Arbitrator reviewed and considered all submissions regarding the claimant's Request To Submit For Decision And Deny Further Response pursuant to Rule 10314(b)(2)(C), formerly Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure. The Arbitrator denied the request.

In accordance with Rule 10302 of the Code of Arbitration Procedure, the record reflects that respondents Hubert-Rosche Securities, Ltd and Buttonwood Securities, Inc. were served by regular mail and given an opportunity to respond to the Statement of Claim, which they failed to do.

Pursuant to the by-laws of NASD Regulation, Inc., the arbitrator determined that respondents Hubert-Rosche Securities, Ltd and Buttonwood Securities, Inc. had notice of the claim, and were required to submit to this arbitration proceeding; and are therefore bound by the arbitrator's ruling and determination.

### **AWARD**

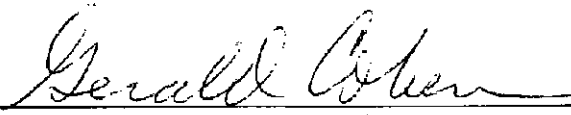
Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, Gerald Cohen, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Craig G. Griffeth on July 2, 1996. Respondents Hubert-Rosche Securities, Ltd., Buttonwood Securities, Inc. and Michael Lipkin did not file Submission Agreements as required pursuant to Rules 10301 and 10302 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. Respondents Hubert-Rosche Securities, Ltd and Buttonwood Securities, Inc. are jointly and severally liable and shall pay to Claimant Craig G. Griffeth \$7,829.85 in actual damages.
2. Respondents Hubert-Rosche Securities, Ltd and Buttonwood Securities, Inc. are jointly and severally liable and shall pay to Claimant Craig G. Griffeth interest at the rate of 12% per annum from October 25, 1995 to the date of payment of the award.
3. The claim of Claimant Craig G. Griffeth against Michael Lipkin is dismissed in its entirety.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the Claimant Craig G. Griffeth shall be retained by NASD Regulation, Inc. Respondents Hubert-Rosche Securities, Ltd and Buttonwood Securities, Inc. are jointly and severally liable and shall pay to the Claimant Craig G. Griffeth \$150.00 as reimbursement of the filing fee.
6. All other relief requests are denied.

**AFFIRMATION**

I, **GERALD COHEN, ESQ.**, 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.

  
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Signature of Arbitrator

Date of Decision:     April 23, 1997