

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Paul Holthouse

96-02917

Name of Respondents

Gilbert Marshall & Co. Inc.
Michael Usher
John Guyette
Dick Tyler
Ted Lauer
Thomas Patrick Meehan
Doug Glaser
Dan Lehl

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on July 8, 1996, claimant Paul Holthouse ("claimant") through his representative and counsel James A. Sigler, Esq., a sole practitioner located in Granada Hills, California, alleged that respondents Gilbert Marshall & Company, Inc. ("Gilbert Marshall"), Michael Usher ("Usher"), John Guyette ("Guyette"), Richard Tyler ("Tyler"), Ted Lauer ("Lauer"), Thomas Patrick Meehan ("Meehan"), Douglas Glaser ("Glaser"), Daniel Lehl ("Lehl") failed to execute the sell order. Claimant further alleged that during late October 1994, he received a cold-call from Lauer who made numerous statements to him regarding Sky Scientific, Inc., ("SKYS") common stock, its current and future operations and its investment potential. Claimant also alleged Lauer did not exert any pressure on him to purchase SKYS. Claimant asserted that on October 28, 1994, he received another call from Lauer who implemented high-pressure, boiler-room style sales techniques designed to pressure him to invest in SKYS. Claimant further asserted that he acquiesced and authorized the purchase of 7,000 shares of SKYS stock at \$.73/share.

Claimant also asserted that less than two weeks later, Lauer told him that he had worked closely with Meehan at Gilbert Marshall, and that he was an expert on SKYS and that the two of them changed firms and were now with J. A. Overton. Claimant contended that although the price of SKYS had been falling, the two men repeatedly pressured him to purchase an additional 17,050 shares of SKYS stock. Claimant further contended during late February or early March of 1995, Peritzman of Gilbert Marshall, called him and notified him that he had been assigned to his account. Claimant also contended that Peritzman stated that he was informed by Glaser and Lehl that SKYS was a good investment opportunity and that the price would be rising dramatically. Claimant alleged that Peritzman stated to claimant that he had not investigated SKYS, but was merely relaying the information he was receiving from others at Gilbert Marshall and offered to assist claimant in any way that he could. Claimant further alleged that based upon what he had been told by Lauer and Meehan and the information he received via Peritzman,

he decided to purchase an additional 24,000 shares of SKYS. Claimant also alleged having been uncomfortable with the high-pressure sales tactics of Lauer and Meehan, and feeling comfortable with Peritzman, he transferred his holdings of SKYS at J.A. Overton, to Gilbert Marshall so that Peritzman could handle his account.

Claimant asserted that on April 24, 1995, SYKS declared a 10:1 reverse stock split, resulting in claimant owning 4,805 shares of new SKYS stock, with the old stock being canceled. Claimant further asserted that had the price at which he bought SKYS been a reasonable market price, a 10:1 reverse split would have reached in each new shares being worth approximately \$5.00/share, based upon a rough estimate of the average price of claimant paid for his purchases of old SKYS stock. Claimant also asserted that the May 1995 price of the new shares was almost identical to the average price he paid for the old SKYS, which suggested that the price of the old SKYS stock had been artificially inflated.

Claimant further contended that Lauer and Meehan omitted material information regarding SKYS that would have influenced his decision to invest in the company. Claimant also contended that at no time did Lauer or Meehan inquire as to what his financial circumstances or investment objectives were. Claimant alleged that respondents implemented a fraudulent scheme to manipulate the price of SKYS. Claimant further alleged that much of the wrongdoing alleged occurred at one or more of Gilbert Marshall's branch offices.

Respondent Richard Tyler, who appeared Pro Se, denied any wrongdoing pertaining to this arbitration proceeding. Respondent Tyler maintained that he was/is a registered representative of Gilbert Marshall. Respondent further maintained that he is not, nor ever has been a compliance officer or a control person at Gilbert Marshall. Respondent Tyler also maintained that if pursued, he would pursue legal action against claimant.

Respondent John Guyette, who appeared Pro Se, maintained that he was never the compliance officer for Gilbert Marshall. Respondent Guyette further maintained that the basis for this statement was from a quote made by the State of Indiana which named him as the compliance officer. Respondent Guyette also maintained that he notified the State of Indiana that he was never the compliance officer. Respondent Guyette contended that this mistake was inadvertently made because he answered the phone one Friday afternoon after the market hours and that he was the only broker in the office. Respondent Guyette further contended that he should not be named as a party in this proceeding.

Respondents Gilbert Marshall and Michael Usher (hereafter collectively referred to as "respondents"), who appeared Pro Se, maintained that for 1995 and so far this year to date, approximately 46% of the firms commissions are from mutual fund and annuity sales. Respondents further maintained that stock transactions are widely diversified and no one at Gilbert Marshall has ever been told by an officer of the firm to recommend any particular investment to any client. Respondents also maintained that each registered representative is free to choose the investment they feel is best for their clients. Respondents contended that Gilbert Marshall has never been the boiler room operation that claimant tries to portray. Respondents further contended that claimant responded to a mailer which he received from SKY Scientific. Respondents also contended that by responding, claimant's name was referred to the branch office in Denver where Lauer was located. Respondents also contended that there were over 35 brokerage firms making a market for SKYS at the time. Respondents maintained that it appears claimant purchased SKYS from at least three different brokers and through at least two different brokerage firms. Respondents further maintained that they have no knowledge of any fraud by any registered representative of Gilbert Marshall.

Respondents also maintained that Peritzman either recommended claimant buy the stock or through his own research relayed information to claimant to cause him to buy the stock. Respondents contended that Peritzman processed about 60 buy transactions of SKYS for his client, which would lead them to believe that he researched the company on his own. Respondents further contended that the reverse stock split caused the value of all shareholders accounts to drop in value as the price dropped rapidly following the split. Respondents also contended that with all the market makers and the huge trading volumes it would be all but impossible to artificially inflate a stock.

RELIEF REQUESTED

Claimant requested: (1) \$10,000 in compensatory damages; (2) an annual interest rate of 10% of his investment from the date of his investments to the present; (3) \$150 for the filing fee; (4) \$3,000 (amended to \$6,500) for Attorneys' fees; (5) punitive damages in an amount to be determined by the arbitrator; (6) and any such other and further relief as the arbitrator deems appropriate.

Respondent Tyler requested that the arbitrator remove his name from the arbitration and that the claims of claimant against him be dismissed in their entirety, plus costs, expenses and attorneys' fees for defending this frivolous claim.

Respondent Guyette requested that the claims of claimant against him be dismissed in their entirety.

Respondents Gilbert Marshall and Usher requested that the claims of claimant against them be dismissed in their entirety, plus \$100.00 NASD fee, and \$2,100.00 in expenses and justifiable damages for defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Ted Lauer, Thomas Patrick Meehan, Doug Glaser and Dan Lehl did not respond to the Statement of Claim.

AWARD

Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure ("Code") a single Public Arbitrator, Irving Pfeffer, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Paul Holthouse on November 30, 1995, by respondents Gilbert Marshall, Michael Usher and John Guyette on September 16, 1996 and by respondent Dick Tyler on September 7, 1996 as required by Rules 10301 and 10302 of the Code.


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. Respondent Gilbert Marshall & Company is liable and shall pay to claimant Paul Holthouse \$10,000.00 in actual damages.
2. The claims of claimant Paul Holthouse against respondents Michael Usher, John Guyette, Dick Tyler, Ted Lauer, Thomas Patrick Meehan, Doug Glaser and Dan Lehl are dismissed in their entirety.
3. Respondent Gilbert Marshall & Company is liable and shall pay to claimant Paul Holthouse \$3,000.00 for attorney fees, pursuant to claimant's request.

4. All other relief requests are denied.
5. The \$150 filing fee previously deposited by claimant Paul Holthouse shall be retained by NASD Regulation, Inc. Respondent Gilbert Marshall & Company is liable and shall pay claimant Paul Holthouse \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **Irving Pfeffer**, 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.



Irving Pfeffer

Date of Decision: June 9, 1997