

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donald Porchia

96-03479

Name of Respondents

Biltmore Securities, Inc.
Alan Siemens

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 12, 1996, claimant Donald Porchia ("claimant") through his representative, Thomas G. D'Luge, Esq., of the law firm of D'Luge, Miles & Miles, P.L.C., located in Mount Clemens, Michigan, alleged that respondents Biltmore Securities, Inc. ("Biltmore"), through its representatives, Richard Charette ("Charette") and respondent Alan Siemens ("Seimens"), sold him securities to his detriment. Claimant further alleged that in February of 1996, he was contacted by Charette who convinced him to purchase 100 shares of McDonalds' stock. Claimant also alleged that in March of 1996, he spoke with Siemens after several unsuccessful attempts to contact Charette. Claimant contended that Siemens told him he would be handling the account and that he should buy shares of Judick because he could get a better return with it than with McDonalds. Claimant further contended that he purchased 5000 shares of Judick and sold the McDonalds stock. Claimant also contended that in April of 1996, Siemens contacted him and suggested that he purchase shares of TMCI Electric and that he could make \$25,000.00 if he did it quickly. Claimant asserted that he reluctantly agreed to the purchase and called Siemens the next day to cancel the trade because he was concerned about the money. Claimant further asserted that after several calls he was able to get Siemens to sell the stock at a loss.

Respondents Biltmore Securities, Inc. and Alan Siemens through their representative, Perri Erlanger, Esq., of the law firm of Bernstein & Wasserman, located in New York, New York, maintained that claimant is a successful businessman and a sophisticated investor. Respondents further maintained that upon opening his account, claimant informed them that his investment objectives were income and growth and signed his new account form accordingly. Respondents also maintained that claimant informed that he had a \$200,00.00 portfolio and was interested in

speculative investing. Respondents contended that claimant authorized the transactions in his account and paid for them McDonalds and Judick as required. Respondents further contended that claimant confirmed the trades and received confirmation slips as well. Respondents also contended that claimant did not pay for the TMCI Electric trade and that consequently they were forced to liquidate his account. Respondents asserted that they did misinform claimant about making money on his transactions and that they should not be held liable.

RELIEF REQUESTED

Claimant Donald Porchia requested \$9,077.50 in actual damages.

Respondents Biltmore Securities, Inc. and Alan Siemens requested that the claims be dismissed, plus costs, expenses, and such other and further relief as the panel deems just and proper.

AWARD

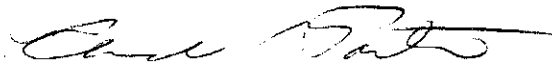
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Richard G. Porter, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on August 6, 1996, and by respondent Biltmore Securities, Inc. on October 1, 1996, but not by respondent Alan Siemens as is required by Sections 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. The respondents Biltmore Securities, Inc. and Alan Siemens are jointly and severally liable and shall pay to the claimant Donald Porchia \$7,902.50 in actual damages.
2. The respondents Biltmore Securities, Inc. and Alan Siemens are jointly and severally liable and shall pay to the claimant Donald Porchia simple interest at the rate of 8% per annum from May 8, 1996 to date of payment of the award.
3. The parties shall bear their respective costs and attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The respondents Biltmore Securities, Inc. and Alan Siemens are jointly and severally liable and shall pay to the claimant Donald Porchia \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, Richard G. Porter, 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.

A handwritten signature in cursive script, appearing to read "Richard G. Porter", is written above a horizontal line.

Signature of Arbitrator

DATE OF DECISION: December 23, 1996