

N.A.S.D. ARBITRATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Thomas J. Hughes

96-04155

Name of Respondents

Bernard Herold & Co., Inc.  
Mario J. Giammarco

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on September 18, 1996, claimant Thomas J. Hughes ("Claimant"), who appeared Pro Se, averred that he maintained account number 5M7-001255 with Respondent Bernard Herold & Co., Inc. ("Herold"). Claimant alleged that Respondent Mario J. Giammarco ("Giammarco") was Herold's registered principal and representative responsible for the account. Claimant further alleged that he called Giammarco to inquire about a company known as Projectavision ("PJTV"), and that Giammarco informed him that the stock was okay. Claimant also alleged that on or about April 8, 1993, Giammarco purchased 2,000 shares of PJTV at \$14.50 per share in account type 2. Claimant asserted that on or about April 12, 1993 Giammarco informed him that PJTV was not marginable, canceled the trade and reprocessed it in account type 1. Claimant further asserted Respondents Herold and Giammarco (1) never informed him at the time of purchase that PJTV was a non-marginable security, (2) did not give him the opportunity to cancel the trade, (3) caused him to be subject to margin calls and sale of other stock to cover those calls, and (4) failed to advise him of the error in the trading activity. Claimant also asserted that as a result of the actions of Respondents Herold and Giammarco, he has suffered monetary losses.

Respondents Bernard Herold & Co., Inc. and Mario J. Giammarco ("Respondents"), through their representative and President of Bernard Herold & Co., Inc. maintained that Claimant entered an unsolicited order to purchase 2000 PJTV at the market. Respondents further maintained that neither party made any representation that PJTV was marginable. Respondents also maintained that on April 9, 1993, Respondents' clearing firm Pershing & Co. informed them that PJTV was not marginable. Respondents asserted that Claimant was informed of this fact and indicated that as he had until settlement date, he would wait and see what developed with PJTV. Respondents further asserted that on April 12, 1993, Pershing & Co. reprocessed the trade according to its normal procedures from a type 2 (margin) to type 1 (cash). Respondents also asserted that Claimant discussed PJTV and his account status with Giammarco and sold PJTV on April 27, 1993. Respondents contended that Claimant signed a margin agreement on February 1985 and agreed to be bound by the margin policies of Pershing & Co. Respondents further contended that if Claimant had sold PJTV immediately upon learning that the stock was not marginable, his loss would have been \$500. Respondents also contended that Claimant should take full responsibility for his loss.

**RELIEF REQUESTED**

Claimant Thomas J. Hughes requested \$10,000 in actual damages.

Respondents Bernard Herold & Co. Inc. and Mario J. Giammarco requested that the claims be dismissed in their entirety, plus costs of this proceeding and award respondents such additional relief as may be just and equitable.

**AWARD**

Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, William A. Mechmann, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Thomas J. Hughes on September 24, 1996, by Respondent Bernard Herold & Co. Inc. on October 29, 1996 and by Respondent Mario J. Giammarco on October 22, 1996.

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 Bernard Herold & Co. Inc. is liable and shall pay to Claimant Thomas J. Hughes \$500.00 in actual damages.
2. Respondent Bernard Herold & Co. Inc. is liable and shall pay to Claimant Thomas J. Hughes interest at the rate of 9% per annum from September 3, 1996 to the date of payment of the award.
3. The claims of Claimant Thomas J. Hughes against Mario Giammarco are dismissed in their 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 Thomas J. Hughes shall be retained by NASD Regulation, Inc. Respondent Bernard Herold & Co. Inc. is liable and shall pay to the Claimant Thomas J. Hughes \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **WILLIAM A. MECHMANN**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument, which is my award.



Signature of Arbitrator

Date of Decision: March 6, 1997

# CLOSE-OUT INSTRUCTION SHEET

**\*\*MAKE SURE ALL RELIEF REQUESTS ARE CLOSED\*\***

DATE 3/6/99

LEGAL ASSISTANT YCH

1. CASE # 96-4155

2. CASE NAME Hughes vs Bernard Heide  
vs. and Marie Giannaro

3. **CASE STATUS**

☒ **CLREG** closed, full file available

## **SUB-STATUS**

- ☐ **CLTRO** case stayed or enjoined by court
- ☐ **CLSTP** closed with stipulated award
- ☐ **CLBRP** closed because of bankruptcy stay
- ☐ **CLW** Case is closed, withdrawn with prejudice
- ☐ **CLWO** Case is closed, withdrawn without prejudice
- ☐ **CLSET** Case is closed, settled
- ☐ **CLFOR** Case is closed, forum denied
- ☐ **CLHRG** Case is closed, by hearing
- ☒ **CLPAP** Case is closed, by papers
- ☐ **CLDEF** Case is closed, deficient
- ☐ **CLUNK** Case is closed, unknown
- ☐ **CLOTH** Case is closed, other
- ☐ **CLREF** Case is closed, referred to another forum
- ☐ **CLSEM** Case is Closed, settled through mediation

4. CASE WITHDRAWN: \_\_\_\_\_ (DATE OF WITHDRAWAL LETTER)

5. CASE SETTLED: \_\_\_\_\_ (DATE OF SETTLEMENT LETTER)

6. TOTAL AMOUNT OF THE FILING FEE: \$150.00

7. RETAINED: \$150.00 8. AMOUNT OF REFUND: —

9. ULTIMATE DISPOSITION: HRG, (SIM) WTD, SET, FOR

10. SPECIAL INSTRUCTIONS: LC09A

✓ 11. RC05A