

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Yale and Frances Garber

96-04240

Name of Respondents

Biltmore Securities, Inc.
Thomas M. Pronesti

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 23, 1996, claimants Yale and Frances Garber ("claimants"), who appeared Pro Se, alleged that respondents Thomas Pronesti ("Pronesti") and Biltmore Securities, Inc. ("Biltmore") did not receive the security they bargained for. Claimants further alleged that on July 26, 1995 Pronesti called them and offered 1000 shares of an IPO at 4 3/8. Claimants also alleged that they agreed to purchase the IPO and three days later received a bill for payment. Claimants asserted that the bill was a net amount without commission which led Mr. Garber to believe that they in fact purchased an IPO. Claimants further asserted that they did not receive a prospectus, so on July 31, 1995, they went to Biltmore to pay the bill and also explain that they did not receive a prospectus. Claimants also asserted that Pronesti told them there was an error and gave a prospectus to them. Claimants contended that they told Pronesti that they would be out to the country and would be calling for information regarding the stocks progress. Claimants further contended that when they returned to the States, they were informed that they did not get an IPO, but were placed in the secondary market. Claimants also contended that when they called Arnold Roseman ("Roseman"), Compliance Manager, no answer was received. Claimants alleged that they got a letter from Robin Bush ("Bush"), Branch Office Manager, indicating that she would respond as quickly as possible. Claimants further alleged that Bush did respond claiming no wrongdoing, but no going into the telltale proof in the billing.

Respondents Biltmore and Pronesti through their representative and counsel Peri Erlanger of the law firm Bernstein & Wasserman located in New York City, New York maintained that Mr. Garber specifically represented that he was an experienced investor and his investment objectives were speculation and growth. Respondents further maintained that on July 26, 1995, based on Pronesti's recommendation, Mr. Garber purchased 1000 shares of Czech Industries, Inc. ("Czech"). Respondents also maintained that Pronesti explicitly stated to Mr. Garber that he was recommending the purchase of Czech common stock. Respondents contended that Pronesti never told Mr. Garber that these were units of an IPO. Respondents further contended that Garber could not have participated in the Czech IPO because it took place on June 8, 1995, two months prior to his purchase. Respondents also contended that the confirmation slip which claimants received indicated that they purchased 1000 shares of Czech, it does not indicate that they bought units in an IPO.

Respondents maintained that when claimants received the prospectus, it clearly stated that the offering price for Czech units was \$7.00, which was different than the price paid by Garber for the common stock. Respondents further maintained that if Mr. Garber was under the impression that they had purchased an IPO, he must have been aware at the point he received the confirmation slip that he had bought common stock in the secondary market. Respondents also maintained that it was not until December 1995, months after the trade was executed and months after he received monthly account statements reflecting his holding of Czech common, did claimants decided to object to the trade.

RELIEF REQUESTED

Claimants Yale and Frances Garber requested that the trade be voided and their original investment of \$4,390.00 be returned to them.

Respondents Biltmore and Pronesti requested that the claims of claimants be dismissed in their entirety, plus costs, expenses, such other and further relief as the arbitrator deems just and proper.

AWARD

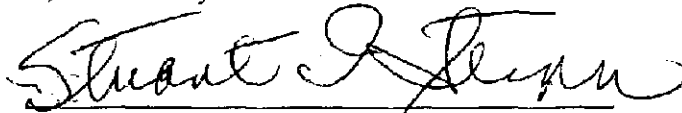
Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator Stuart Stern, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimants Yale and Frances Garber on September 16, 1996 and by respondent Biltmore Securities, Inc. on October 1, 1996. Respondent Thomas Pronesti did not execute a Submission Agreement as required by Rules 10301 and 10302 of the 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 claims of claimants Yale and Frances Garber against respondents Biltmore Securities, Inc. and Thomas Pronesti are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimants shall be retained by NASD Regulation, Inc.

AFFIRMATION

I, **Stuart Stern**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Stuart I. Stern

Date of Decision: April 3, 1997