

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Lyle E. Borop

96-04288

Name of Respondents

Toluca Pacific Securities Corp.;
Paul T. Fiorini; and
Thomas John Gucciardo

REPRESENTATION

For Claimant: Claimant Lyle E. Borop ("Borop") was represented by Randall M. Lending, Esq. and James A. Arpaia, Esq. of Vedder, Price, Kaufman & Kamholz, located in Chicago, Illinois.

For Respondent: Respondents Toluca Pacific Securities Corp. ("Toluca") and Paul T. Fiorini ("Fiorini") were originally represented by Sheldon M. Jaffe, Esq. of Gartenberg, Jaffe, Gelfand & Stein, LLP, located in Los Angeles, California. Mr Jaffe withdrew as counsel on January 15, 1996. Thereafter, Toluca and Fiorini were represented by Mark Astarita, Esq. of Gusrae, Kaplan & Bruno, located in New York, New York until their withdrawal as counsel on April 16, 1997. Toluca and Fiorini did not appear at the hearing.

Thomas John Gucciardo ("Gucciardo") did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: September 26, 1997.

Claimant's Submission Agreement signed on: September 25, 1996.

Statement of Answer filed by Respondents, Toluca and Fiorini on: November 13, 1996.

Respondent Toluca's Submission Agreement signed on: January 7, 1997 by Paul Fiorini, President, Toluca Pacific Securities Corp.

Respondent Fiorini's Submission Agreement signed on: January 7, 1997.

Respondent Gucciardo did not file an Answer or an executed submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: February 25, 1997 before One (1) arbitrator.

Hearing Dates/Sessions: May 12, 1997 for Two (2) sessions; and
May 13, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Borop alleged that Respondents induced his purchase of two highly speculative penny stocks through the employment of high-pressure sales tactics and the making of material misrepresentations regarding the suitability, nature and risks of the investment. In addition, the Respondents engaged in unauthorized transactions and sold stock which was not registered with the Illinois Securities Department. Eventually, the Illinois Securities Department intervened and Toluca agreed to cancel a certain order and credit the account with the purchase price. Toluca reneged and failed to pay the sum agreed to Borop.

Based on the above allegations, Borop asserted that Respondents conduct violated the Securities Exchange act of 1934, the Penny Stock Reform Act, the NASD Rules of Fair Practice, State Securities Law and common law.

Respondents Toluca and Fiorini denied the material allegations of the Statement of Claim, alleging that the investments were suitable given the account objectives and personal information given by Borop. In addition, Toluca and Fiorini asserted that they were fully willing to pay the Settlement amount agreed to with the Illinois Securities Department, but that Borop had refused to execute a release. When Borop finally agreed to execute a release, financial reverses resulted in Toluca not being able to pay the entire amount immediately. Borop refused to accept payments. In addition, Toluca and Fiorini asserted several affirmative defenses.

Respondent Gucciardo did not file an answer.

RELIEF REQUESTED

Borop requested entry of an award against Respondents for damages in excess of \$237,448.29 for the losses on the stock; punitive damages; interest; attorneys' fees and costs.

Respondents Toluca and Fiorini requested that the claim be dismissed and that the Respondents be awarded costs of these proceedings.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Gucciardo did not file an answer or an executed submission agreement, but is required to submit to arbitration pursuant to Section 10301 of the Code of Arbitration Procedure.

Respondents Toluca, Fiorini and Gucciardo did not appear at the hearing. After review of the correspondence, the Office of Dispute Resolution file and the representations of Claimant's counsel, the Panel determined that Respondents had received due notice pursuant to Section 10315 of the Code of Arbitration Procedure and that the arbitration would proceed pursuant to Section 10318 of the Code. In addition, the Panel finds that it was not presented with, and did not consider or decide, any issue regarding non-parties, which issues might involve Toluca's carrying firm or any other non-party person or entity.

The Panel specifically found that each Respondent engaged in intentional wrongdoing, including fraud and breach of fiduciary responsibilities.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Toluca Pacific Securities Corp., Paul Fiorini and Thomas John Gucciardo are jointly and severally liable for and shall pay to the Claimant, Lyle E. Borop, the sum of \$271,000.00 as actual damages;
2. In addition, Respondents Toluca Pacific Securities Corp., Paul Fiorini and Thomas John Gucciardo are jointly and severally liable for and shall pay to the Claimant, Lyle E. Borop, the sum of \$350,000.00 as punitive damages. In deciding to award punitive damages, the Panel considered the Claimant's arguments in favor of punitive damages and the findings of the Panel, and determined that authority existed for an award of punitive damages to the Claimant;
3. Furthermore, Respondents Toluca Pacific Securities Corp., Paul Fiorini and Thomas John Gucciardo are jointly and severally liable for and shall pay to the Claimant, Lyle E. Borop, the sum of \$25,000.00 as attorneys' fees and expert witness fees. In deciding to award attorneys' fees and expert witness fees, the Panel considered the Claimant's arguments in favor of these fees and the findings of the Panel, and determined that authority existed for an award of attorneys' fees and expert witness fees to the Claimant; and

4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Claimant Lyle E. Borop is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$50.00 for the speaker phone placed into the hearing. In addition, Claimant Lyle E. Borop is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$30.00 for copies of awards on December 10, 1996.

Respondent Toluca Pacific Securities Corp. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge in the sum of \$350.00 due pursuant to Section 10333 of the Code.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing x \$300.00 per session = \$300.00; Three (3) hearing sessions x \$750.00 per session = \$2,250.00; Total Forum Fees = \$2,550.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 non-refundable claim filing fee and retain \$80.00 of the \$750.00 hearing session deposit as payment of the sums due for the speaker phone and awards. The Office of Dispute Resolution shall refund the remaining \$670.00 to the Claimant, Lyle E. Borop. Respondents Toluca Pacific Securities Corp., Paul Fiorini and Thomas John Gucciardo are jointly and severally liable for and shall pay to the NASD Regulation Inc., Office of Dispute Resolution the sum of \$2,550.00 as forum fees.

Concurring Arbitrators' Signatures
Name

Date

/s/ Robert S. Sugarman, Esq.
Robert S. Sugarman, Esq.
Public Arbitrator/Chairperson

May 19, 1997

/s/ John J. Enright, Esq.
John J. Enright, Esq.
Public Arbitrator

May 20, 1997

/s/ Ronald C. Peters, CPA, CTA
Ronald C. Peters, CPA, CTA
Industry Arbitrator

May 21, 1997