

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimants

Peter M. and Donna L. Pembroke

96-04457

Name of Respondents

Norfolk Securities Corp.  
Gregory Hall

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**REPRESENTATION**

Claimants Peter M. and Donna L. Pembroke ("claimants") appeared Pro Se.

Respondent Norfolk Securities, Corp. ("Norfolk") did not appear at the hearing.

The claims against respondent Gregory Hall ("Hall") were settled prior to the hearing.

**CASE INFORMATION**

Statement of Claim filed: October 7, 1996.

Claimants' Submission Agreement signed on: October 1, 1996.

Statement of Answer and Cross Claim filed by respondent Norfolk on:

Respondent Norfolk did not file a properly executed Submission Agreement.

Respondent Hall did not file a Statement of Answer to the Statement of Claim or to the Cross Claim, nor did he file a Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:

March 31, 1997

one session

The hearing was conducted at the Westin William Penn Hotel located at 530 William Penn Place in Pittsburgh, Pennsylvania.

### CASE SUMMARY

Claimants alleged that on May 15, 1996 they were contacted by Hall, a Norfolk broker, who asked them to purchase shares of Advanced Tissue, Inc. ("ATIS") and agreed not to charge a commission to show that he could pick good stocks. Claimants further alleged that a few days later he called asking them to purchase shares of Antares Resource, Inc. ("ANTR") stating that it was going to be taken over by a larger company and would go up in value. Claimants also alleged that when the first statement arrived, it showed activity which had not been authorized and showed the purchase of ANTR at \$4.00 per share instead of the \$3 7/8 which had been agreed upon. Claimants contended that at the beginning of June the ANTR stock was falling in value and that Hall could not be reached. Claimants further contended that people at Norfolk continued assuring them that the stock would go up in value because it was being shorted and that Hall would not return their calls.

Claimants asserted that this led to a call to the Pennsylvania Securities Commission whereupon they learned that the respondents had other regulatory problems. Claimants further asserted that they contacted Norfolk and requested to have the ANTR stock certificate transferred to another firm. Claimants also asserted that as a result of the above, they have suffered a loss for which the respondents should be held liable.

Respondent Norfolk maintained that it has no knowledge of the conversations between Hall and other of its employees as alleged in the Statement of Claim. Respondent further maintained that it cannot be held liable for transactions at another brokerage firm as a matter of law. Respondent also maintained that claimants admit that the purchase of ANTR shares while the account was at Gruntal was their own decision and losses stemming from that decision cannot be attributed to its actions. Respondent contended that claimants admit authorizing the trades and did not complain about the transaction prior to commencing this arbitration. Respondent further contended that the price paid for ANTR shares was \$3 7/8 and that claimants are misreading the account statement. Respondent also contended that claimants' difficulty in contacting Hall was not due to its policy but due to the activities of the brokers. Respondent requested that the claims be dismissed in their entirety.

Respondent Norfolk filed a Cross Claim against respondent Hall alleging that Hall was employed pursuant to a written employment agreement which set forth his duties and obligations to Norfolk. Respondent further alleged that the Statement of Claim alleges that the brokers made statements suggesting that they were privy to secret or insider information about securities they were recommending. Respondent also alleged that it has no knowledge of these recommendations and that if Hall, in fact, were making such recommendations, it must be indemnified by Hall as his actions would constitute a breach of his employment agreement with it.

Respondent Hall did not file a Statement of Answer.

### RELIEF REQUESTED

Claimants requested \$6,040.12 in actual damages, treble damages and forum fees.

Respondent Norfolk requested that the claims be dismissed in their entirety and should the panel find liability for the claims, that it be indemnified by respondent Hall.

### OTHER ISSUES CONSIDERED & DECIDED

The arbitrator made the following rulings concerning respondent Norfolk who did not file a Statement of Answer and respondents Norfolk and Hall who did not file a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Norfolk was a member of the NASD at the time this controversy arose and that respondent Hall was an associated person. Consequently, the panel found personal jurisdiction over respondents pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found that respondent Hall was required to file with NASD Regulation a Statement of Answer respondents Hall and Norfolk were required to file and properly executed Submission Agreements pursuant to Rule 10314(b) of the NASD Code of Arbitration Procedure. ~~In this regard, the panel found that the Statement of Claim was properly served upon respondents pursuant to Rule 10314(a) of the Code.~~
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided respondents with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without respondents, whose absences were unexcused.

### AWARD

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

1. Respondent Norfolk Securities, Inc. is liable and shall pay to claimants Peter and Donna Pembroke \$6,040.12 in actual damages.
2. Respondent Norfolk Securities, Inc. is liable and shall pay to claimants Peter and Donna Pembroke \$12,80.24 in treble damages.

3. The Cross Claim of respondent Norfolk Securities, Inc. against respondent Hall is dismissed in its entirety.
4. The parties shall bear their respective costs and attorney's fees.
5. All other relief requests are denied.

#### FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation shall retain the \$75.00 non-refundable filing fee previously deposited by claimants. Further, respondent Norfolk shall pay to NASD Regulation \$500.00 for the non-refundable filing fee under Rule 10205(c) for its Cross Claim and has assessed the following forum fees:

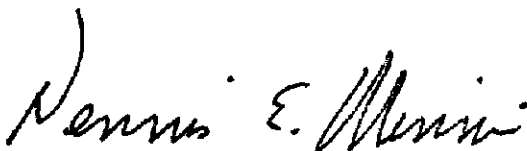
one sessions x \$200.00	= \$200.00
minus claimants' \$200.00 deposit	= \$200.00
total outstanding	= \$ 0.00

Claimants be and hereby liable for the sum of \$100.00 representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$200.00 which shall be retained by NASD Regulation. Therefore, nothing is owed to NASD Regulation by claimants.

Respondent Norfolk Securities, Inc. be and hereby is liable for the sum of \$100.00 representing one-half of the total amount of forum fees assessed. Therefore, respondent Norfolk shall pay to claimants Peter and Donna Pembroke \$100.00 as reimbursement of one-half of the hearing sessions deposit.

#### ARBITRATORS' SIGNATURES

I, Dennis Minni, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Dennis Minni, Esq.  
Public Chairperson

Date of Decision: June 26, 1997