

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Leo D. Beitner

96-04576

Name of Respondents

Herzog, Heine, Geduld, Inc.  
Greenway Capital Corporation  
Mayer Amsel  
Harvey Wacht  
Aaron Brandwein  
National Financial Services Corporation

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**REPRESENTATION**

For Claimant Leo D. Beitner ("Claimant") appeared Jerome Olitt of Arbitration and Mediation Specialists, Inc. with offices located in Stamford, Connecticut.

For Respondents Herzog, Heine, Geduld, Inc. ("Herzog"), Harvey Wacht ("Wacht") and Aaron Brandwein ("Brandwein") appeared Brian Amery, Esq. of the law offices of Bressler, Amery & Ross located in Morristown, New Jersey.

For Respondent Greenway Capital Corporation ("Greenway") appeared Fred Luthy, Executive Vice President for Greenway located in New York, New York.

Respondent Mayer Amsel ("Amsel") did not enter an appearance in this matter.

For Third-Party Respondent National Financial Services Corporation ("NFSC") appeared Michael G. Shannon, Esq., of the law offices of Phillips, Lytle, Hitchcock, Blaine & Huber located in New York, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on October 15, 1996.

Claimant's Submission Agreement was signed on October 15, 1996.

Brandwein and Herzog filed a Joint Statement of Answer and Cross-Claim on January 17, 1997.  
Brandwein's Submission Agreement was signed on May 15, 1997.

Herzog's Submission Agreement was signed on May 14, 1997.

Wacht filed a Statement of Answer and Counter-Claim on April 22, 1997.

Wacht did not file a properly executed Submission Agreement.

Greenway filed a Statement of Answer on May 5, 1997.

Greenway did not file a properly executed Submission Agreement.

Amsel did not file a Statement of Answer or a properly executed Submission Agreement.

NFSC filed a Statement of Answer and Cross-Claim on July 3, 1997.

NFSC signed a Submission Agreement on July 8, 1997.

### HEARING INFORMATION

Pre-Hearing Conference:	December 15, 1997	One Session
Hearing Dates/Sessions:	March 3, 1998	Two Sessions
	March 4, 1998	Two Sessions
	March 17, 1998	Two Sessions
	March 18, 1998	Two Sessions
	March 19, 1998	Two Sessions
	May 11, 1998	Two Sessions
	May 12, 1998	One Session

~~The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.~~

### CASE SUMMARY

The Claimant alleged that, on or about January 5, 1994, he was induced by Greenway and Amsel to purchase 6,000 shares of Vertex Securities, Inc. at approximately \$14.00 per share, for a total purchase price of \$84,453.00. Claimant alleged that he was told by Greenway and Amsel that Amsel 'has been trading this stock for a long time'... is 'on personal terms with the CEO, Jim Maloy'...., Vertex is 'going to take off on a run and double'.... Vertex is 'going to at least 28'...., and that Amsel and Greenway had too many 'of his people in it and could not handle the Claimant's order.' Claimant contended that Amsel referred him to Brandwein at Herzog to place the order.

Claimant maintained that he had no prior securities brokerage accounts with either Brandwein or his supervisory branch office manager, but did, by coincidence only, maintain an inactive account with Herzog with another registered representative which is not at issue in this proceeding. Claimant contended that he, along with a number of other public customers of Herzog and Brandwein, were being 'duped, deceived, taken advantage of, misadvised, misrepresented to and defrauded in connection with purchases of Vertex."

Claimant alleged that the wrongful and fraudulent ploys utilized by Greenway and Amsel were to refer potential investors to Herzog and Brandwein, as well as to other broker dealers, for

purposes of opening an account to purchase Vertex. Claimant also alleged that the fraudulent scheme of referring customers away from Greenway and Amsel to purchase Vertex was to manipulate and artificially support the price of Vertex in the market and lessen the "margin risks" to which Greenway and Amsel were exposed. Claimant contended that Greenway utilized the substantial buy and sell market orders which were met through inventory reductions of Greenway's "House Accounts" and certain other customers' accounts which allowed Greenway and Amsel to create a picture of market activity on the "buy side" of Vertex which appeared as new and significant investor interest in that stock.

In addition, Claimant alleged that, as a consequence of Greenway and Amsel's conduct, the structured transactions resulted in heavy margin calls requiring liquidations which left Herzog and other brokerage firms with large debit balances which have not been satisfied. Claimant alleged that, due to the resultant liquidations, the price of Vertex precipitously dropped in February, 1994 and over the next few months. Claimant contended that, while the price of Vertex dropped precipitously, he was assured by Amsel and Greenway that Vertex was about to announce new developments and contracts and that the price would be returning to its prior levels so that he should maintain his position. Claimant maintained that he relied upon these assurances from Greenway and Amsel.

Claimant contended that it was not until the early part of 1996 that he was first alerted to the possibility of unlawful, fraudulent and/or grossly negligent activities and conduct with respect to Greenway and Amsel. Claimant also alleged, upon information and belief, that Greenway and Amsel were executing orders for the benefit of themselves and were aiding and participating in conduct which was violative of the securities laws and regulations.

Herzog and Brandwein generally denied each and every allegation of wrongdoing contained in the Statement of Claim directed against them. Herzog and Brandwein maintained that all of the specific allegations of wrongdoing in the Statement of Claim related to Greenway and Amsel. Herzog and Brandwein also alleged that Claimant maintained a non-discretionary brokerage account with Herzog and that Claimant's purchase of Vertex was unsolicited.

In addition, Herzog and Brandwein asserted a cross-claim against Greenway and Amsel and a third-party claim against NFSC. Herzog and Brandwein contended that: a) Greenway, Amsel and NFSC knew or were obligated to know that Vertex was not a marginable stock; b) allowed Vertex to be margined despite its non-marginability; c) directly participated in or aided and abetted the scheme to reduce or eliminate their exposure by having Claimant and others open accounts with Herzog and other brokerage firms in which substantial purchases or transfers of Vertex stock were made; and d) benefitted from such purchases or transfers by shifting the risk of loss from themselves to Herzog and other brokerage firms.

NFSC maintained that there was no factual or legal basis upon which Herzog and Brandwein could hold it liable for any liability that they may have had to Beitner. NFSC also maintained that an internal clerical error occurred in the Spring of 1993 whereby it erroneously listed Vertex as margin eligible. NFSC contended that the error did not do anything other than to make it a lender to those who then made their own decisions to buy Vertex on margin. In addition, NFSC contended that it had no involvement in the trading decisions of Greenway's customers, but merely received and performed the back office functions for the customers' trades which Greenway input.

Greenway generally denied all allegations contained in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory, treble and punitive damages in an aggregate amount of \$400,000.00, with interest on \$84,453.00 plus costs and expenses and expert witness fees.

Herzog and Brandwein requested that the Statement of Claim be dismissed in its entirety. In their cross-claim and third-party claim, Herzog and Brandwein requested that, if any liability is assessed against them, Greenway, Amsel and NFSC be held jointly and severally liable to them for such liability or loss.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

By letter dated May 16, 1997, claimant withdrew all claims against Wacht. Therefore, Wacht did not participate in the hearings in this matter.

On December 5, 1997, the panel of arbitrators heard arguments from the parties' counsel with respect to NFSC's Motion to Dismiss the Third-Party Claim. Greenway and Amsel did not participate in this proceeding. The arbitrators determined to grant NFSC's Motion to Dismiss without prejudice. Therefore, NFSC did not participate in the hearings in this matter.

The panel made the following determinations concerning: Amsel who did not file a Statement of Answer or a Submission Agreement and who did not appear at the hearing in this matter; and Greenway who did not file a properly executed Submission Agreement and who did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Greenway was a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Greenway pursuant to Rule 10301 of the Code.
3. The panel found that Amsel was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Amsel pursuant to Rule 10301 of the Code.
4. The panel found that Amsel was required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Amsel pursuant to Rule 10314 (a) of the Code.

5. The panel found that Greenway was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Greenway pursuant to Rule 10314(a) of the Code.
6. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Amsel and Greenway with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Amsel and Greenway whose absences were unexcused.

### **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. Amsel and Greenway be and hereby are jointly and severally liable for and shall pay to Claimant the sum of **EIGHTY FOUR THOUSAND FOUR HUNDRED FIFTY THREE DOLLARS (\$84,453.00)** plus interest.
2. All claims as to Herzog and Brandwein are hereby dismissed.
3. All other requests are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code, Herzog has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Greenway shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, NFSC has paid to NASD \$15.00 of the \$350.00 member surcharge previously invoiced, therefore, National shall pay the remaining balance of \$335.00.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee paid by Claimant, and the \$500.00 non-refundable filing fee deposited by Herzog. In addition, the arbitrators have assessed the following forum fees:

1 pre-hearing conference (with full panel)	=	\$ 750.00
14 Hearing sessions x \$750.00	=	\$10,500.00

1. Claimant be and hereby is liable for the sum of \$5,625.00 representing one-half

of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, Claimant shall pay the \$4,875.00 remaining balance.

2. Amsel and Greenway be and hereby are jointly and severally liable for and shall pay the sum of \$5,625.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

Karimu F. Hill-Harvey, Esq. -

Lydia O. Bishop -

Joan Caridi, Esq. -

Public Chairperson

Public Arbitrator

Industry Arbitrator

**CONCURRING ARBITRATORS' SIGNATURE**

  
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Karimu F. Hill-Harvey, Esq.  
Chairperson/Public Arbitrator

Date of Decision: July 17, 1998

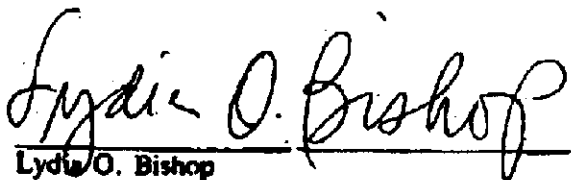
I, Karimu F. Hill-Harvey, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Karimu F. Hill-Harvey, Esq.

**ARBITRATION PANEL**

Karimu F. Hill-Harvey, Esq.-	Public Chairperson
Lydia O. Bishop	Public Arbitrator
Joan Caridi, Esq.	Industry Arbitrator

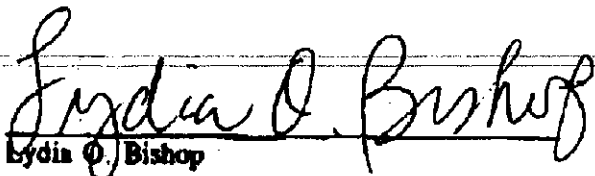
**CONCURRING ARBITRATORS' SIGNATURE**



Lydia O. Bishop  
Public Arbitrator

Date of Decision: July 17, 1998

I, Lydia O. Bishop, do hereby 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.



Lydia O. Bishop



**ARBITRATION PANEL**

Karima F. Hill-Harvey, Esq.  
Lydia O. Bishop  
Joan Caridi, Esq.

- Public Chairperson  
- Public Arbitrator  
- Industry Arbitrator

**CONCURRING ARBITRATORS' SIGNATURE**

  
Joan Caridi, Esq.  
Industry Arbitrator

Date of Decision: July 17, 1998

I, Joan Caridi, Esq., do hereby 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.

  
Joan Caridi, Esq.