

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Berry-Shino Securities, Inc.

and

96-04704

Name of Respondent

Cathy Schaffer, individually and
d/b/a/ Village Partnership and Mountain High Partnership

REPRESENTATION OF PARTIES

Berry-Shino Securities, Inc. ("Claimant") was represented by Christopher J. Berry, Esq., Morrison & Hecker, L.L.P., Phoenix, Arizona.

Cathy Schaffer, individually and d/b/a/ Village Partnership and Mountain High Partnership ("Respondent") represented herself.

CASE INFORMATION

The Statement of Claim was filed on or about October 22, 1996. Submission Agreement of Claimant Berry-Shino Securities, Inc. was signed on October 1, 1996 by R. Matthew Shino.

Statement of Answer was filed by Respondent Cathy Schaffer, individually and d/b/a/ Village Partnership and Mountain High Partnership on or about March 5, 1997. Submission Agreement of Respondent Cathy Schaffer, individually and d/b/a Village Partnership and Mountain High Partnership was signed on March 3, 1997.

CASE SUMMARY

Claimant alleged that Respondent Schaffer failed to pay for the purchase of shares of Orthologic Corporation in her individual account. Specifically, Claimant alleged that Respondent Schaffer submitted a check which was returned for insufficient funds. Claimant alleged that Respondent Schaffer d/b/a Village Partnership and Mountain High Partnership requested the sale of shares of Borealis Tech Corporation. It was alleged that subsequent to placing the sell order, it was discovered that the shares could not be transferred to Claimant to meet the settlement date and therefore,

Claimant was required to purchase shares of Borealis to cover the sell order. Claimant alleged that the actions of Respondent Schaffer constituted breach of contract, fraudulent inducement, and fraud.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the transaction regarding Orthologic was in fact an unauthorized trade made by an employee of Claimant. In addition, Respondent stated that the Borealis transaction was mishandled by the same employee. The Borealis transaction should have occurred subsequent to the receipt of the ACAT but instead, the broker simply entered the order to sell the securities.

RELIEF REQUESTED

Claimant requested an award in the amount of \$8,940.57, interest, together with prejudgment interest, costs, attorneys' fees and punitive damages.

Respondent requested that the claims asserted against her be denied in their entirety and that she be awarded her costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single public arbitrator, requested the scheduling of a hearing. Upon being notified in writing of the arbitrator's request, the parties requested that the arbitrator reconsider the request and determine this matter on the written submissions. The request for reconsideration was granted and the arbitrator makes the decision in this matter based upon the written submissions of the parties.

AWARD

Pursuant to Rule of the NASD Code of Arbitration Procedure, a single public arbitrator, was selected to review the matter in controversy between the parties as set forth in submissions set forth above. After considering the pleadings and the additional written submissions of the parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim asserted in this matter shall be and hereby is dismissed in its entirety.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution ("NASD") shall retain the non-refundable filing fee in the amount of

\$500 and shall retain as forum fees the hearing session deposit in the amount of \$75 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Berry-Shino Securities, Inc..

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$100. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ William H. Long, Esq.
William H. Long, Esq.
Public Arbitrator, Presiding Chair

August 15, 1997