

773

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Allan McCulloch

and

96-05213

Name of Respondent

T.L. Group, Inc.  
Anthony Leone

**REPRESENTATION OF PARTIES**

Allan McCulloch ("Claimant") was represented by Frank Abramson, Esq., Lapp, Lurie, Libra, and  
Abramson & Thomson, Minneapolis, Minnesota.

T.L. Group, Inc. ("Respondent T.L. Group") was represented by Fred Lefevre, its President and  
did not appear at the hearing.

Anthony Leone ("Respondent Leone") did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 22, 1996. Submission Agreement of  
Claimant Allan McCulloch was signed on October 18, 1996.

Statement of Answer was filed by Respondent T.L. Group, Inc. on or about January 15, 1997.  
Submission Agreement of Respondent T.L. Group, Inc. was signed on January 7, 1997 by Fred  
Lefevre.

Respondent Anthony Leone did not file a responsive pleading.

**HEARING INFORMATION**

The hearing was held on Monday, November 17, 1997 in Minneapolis, Minnesota for one (1)  
session.

### **CASE SUMMARY**

Claimant alleged that Respondent Leone, an employee of Respondent T.L. Group without authorization from him sold 10,000 shares of Software of Excellence. Claimant further alleged that Respondent Leone used the proceeds of the unauthorized sale to purchase without authorization 1,500 shares of Rose International, Inc. It was alleged that the actions of Respondent Leone constituted violations of federal and state securities laws and breach of fiduciary duty. It was further alleged that Respondent T.L. Group is liable to Claimant under the doctrine of *respondent superior* and that Respondent T.L. Group failed to properly supervise Respondent Leone.

Respondent T.L. Group denied the allegations set forth in the Statement of Claim. Respondent T.L. Group specifically stated that Respondent Leone insisted that he had the Claimant's verbal limited authority to execute the trades while the Claimant was unavailable for an extended length of time.

Respondent Leone did not file a responsive pleading in this matter.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested an award in the amount of \$37,418.75, plus commissions and service charges; punitive damages in a reasonable amount; reasonable attorneys' fees; and such other and further relief as determined to be just and equitable.

Respondent T.L. Group requested that the claims asserted against it be denied.

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents T.L. Group, Inc. and Anthony Leone had been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent T.L. Group, Inc. had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Anthony Leone did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### 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 T.L. Group, Inc. and Anthony Leone shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of \$30,687.50 (**thirty thousand six hundred eighty seven dollars and fifty cents**) as compensatory damages.
2. Interest at the rate of 5% per annum is awarded on the above stated sum from and inclusive of the date of this award to and inclusive of the date this award is paid.
3. Respondent Anthony Leone shall be and hereby is liable for and shall pay to the Claimant the sum of \$30,687.50 (**thirty thousand six hundred eighty seven dollars and fifty cents**) as punitive damages. In awarding punitive damages the undersigned arbitrators have considered the legal arguments presented by the parties and find that they have the authority to so award punitive damages.

4. Respondents T.L. Group, Inc. and Anthony Leone shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of \$520 (**five hundred twenty dollars**) as reimbursement of filing fees and hearing session deposit previously paid to the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

### FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$400 = \$400 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Allan McCulloch.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of

NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 96-05213  
Award Page 4 of 4

\$200 previously paid by Respondent T.L. Group, Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Judith A. Rogosheske  
Judith A. Rogosheske, Esq.  
Public Arbitrator, Presiding Chair

Dated: November 25, 1997

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

December 1, 1997

/s/ Gerald M. Gifford  
Gerald M. Gifford  
Industry Arbitrator

November 25, 1997