

9705-2

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

Harold B. Hughes,

Claimant,

and

No. 96-05270

Brokers Investment Corp., Daniel H. Steinberg,  
Norman Shubert, Martin W. May, Thomas Steven Shubert,  
and Michael Grossman,

Respondents.

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**REPRESENTATION OF PARTIES**

Claimant, Harold B. Hughes, was represented by Martin J. Gofberg of Securities Arbitration Centers, Inc. Hughes Incorporated, located in Fort Lauderdale, Florida.

Respondent Thomas Steven Shubert represented himself.

Respondents Brokers Investment Corporation, Daniel H. Steinberg, Norman Shubert, Martin W. May, and Michael Grossman were not represented in pleadings or at the hearing in this matter.

**CASE INFORMATION**

Harold B. Hughes' Statement of Claim was filed on or about November 20, 1996.

Harold B. Hughes' Submission Agreement was signed on November 1, 1996.

Thomas Steven Shubert's Statement of Answer was filed on August 4, 1997.

The NASD Regulation, Incorporated Office of Dispute Resolution has no record of a submission agreement from Thomas Steven Shubert.

### HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on August 4, 1997 for two (2) sessions.

The hearing was held in Nashville, Tennessee.

### CASE SUMMARY

Claimant, Mr. Harold B. Hughes ("Claimant"), alleged that he had been deceived by the fraudulent practices and encouraging guarantees made by Respondent Mr. Michael Grossman and his firm, Respondent Brokers Investment Corporation ("Brokers"). Claimant asserted that although the documents for the limited partnership offerings stated that the funds raised from investors would be used for specific business ventures, Brokers, Mr. Norman Shubert, a registered broker and principal of Brokers, Mr. Daniel Steinberg, a registered broker and principal of Brokers, Mr. Thomas Steven Shubert, a principal of Brokers, and Mr. Martin W. May, a registered manager and principal of Brokers (hereinafter, with Mr. Michael Grossman, collectively referred to as "Respondents") misused the funds as part of a ponzi scheme, for unrelated business ventures and for personal use. In addition, Claimant alleged that Respondents misrepresented and omitted to state material facts relating to the viability and cost of certain limited partnerships and the use of investor proceeds. Claimant stated that these allegations involved the following limited partnerships in which he invested: one unit of Sovereign Equipment Fund Limited purchased on or about April 23, 1991 for \$6,250.00; twelve units of Advanced Communications Services Limited purchased on or about October 15, 1991 for \$90,000.00; forty shares of the Big Apple Switch Partners Limited purchased on February 26, 1992 for \$250,000.00; and ten shares of the Big Apple Partners Limited purchased on February 28, 1996 for \$62,500.00. Claimant alleged that his \$408,750.00 investment was lost.

Claimant asserted the following causes of action: (1) offer and sale of unregistered securities in violation of § 5(a) and 5(c) of the Securities Act by Brokers, and Messrs. Norman Shubert, Daniel Steinberg, Thomas Steven Shubert, Martin W. May, and Michael Grossman; (2) breach of fiduciary duty; (3) violation of the anti-fraud provisions, violations of § 17(a) of the Securities Act and § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, by Brokers, and Messrs. Norman Shubert, Daniel Steinberg, Thomas Steven Shubert, Martin W. May, and Michael Grossman; (4) violation of the broker-dealer anti-fraud provisions, violations of and aiding violations of § 15(c)(1) of the Exchange Act and Rule 15c1-2, by Brokers, and Messrs. Norman Shubert, Daniel Steinberg, Thomas Steven Shubert, Martin W. May, and Michael Grossman; and (5) common law fraud.

Respondent Mr. Thomas Steven Shubert ("Mr. Shubert") denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on his part. Mr. Shubert asserted the following: (1) Claimant has not stated any factual or legal basis for Mr. Shubert's liability in this matter; (2) Mr. Shubert never had any contact or involvement whatsoever with the Claimant or the Claimant's

investments at any time; (3) Mr. Shubert had no involvement with the offer or sale of interests in the subject investments to Claimant; (4) Mr. Shubert is not, and never was, the owner of Brokers; (5) Mr. Shubert had no involvement with any of the partnerships which are the subject of Claimant's claims; (6) Mr. Shubert never had, nor ever exercised any control or supervision of Brokers with respect to any sales activities; (7) Mr. Shubert never received, either directly or indirectly, nor did he ever have any control of the funds received from investors in connection with the partnerships at issue; (8) Claimant purchased limited partnership units pursuant to confidential offering memoranda which fully, completely, and accurately disclosed all aspects of the investments made by Claimant, including the risk involved in the investments and the possibility that any investment may be lost in its entirety; (9) Claimant represented that it had received the offering memoranda and the exhibits thereto, had reviewed them carefully, and relied solely thereon and investigations made by it or its representative in making the decisions to invest; (10) Claimant waived and is estopped to assert the claims set forth in his Statement of Claim; (11) the investments made by Claimant were properly registered and/or exempt from registration pursuant to all applicable federal and state laws; (12) Claimant's claims are barred by applicable statute of limitations provisions; (13) there is no private right of action under § 15(c)(1) of the Securities Exchange Act of 1934; (14) there is no aiding and abetting liability under the Securities Exchange Act of 1933 or the Securities Exchange Act of 1934; (15) Mr. Shubert did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which liability is alleged to exist upon him, and did not control, either directly or indirectly, a person liable for the alleged violations.

#### **RELIEF REQUESTED**

Claimant, Harold B. Hughes, requested an award for: compensatory damages of \$408,750.00; punitive damages of \$90,000.00 as allowed by the U.S. Supreme Court in *Mastrobono v. Shearson Lehman Hutton, Inc.*; and a disciplinary referral to the NASD Business Conduct Committee.

Respondent Mr. Thomas Steven Shubert requested that the claims asserted against him be dismissed in their entirety with prejudice.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made by/on behalf of Claimant, Mr. Harold B. Hughes, the undersigned arbitrators have determined that Respondents Brokers Investment Corporation and Messrs. Daniel H. Steinberg and Norman Shubert have been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents Brokers Investment Corporation and Messrs. Daniel H. Steinberg and Norman Shubert had received due notice of the hearing as required under § 10318 of the Code.

At the hearing in this matter, Respondent Mr. Thomas Steven Shubert requested leave to file his response and attachment by fax and to participate in the hearing of this matter by telephone. Claimant, Mr. Harold B. Hughes, objected to Mr. Thomas Steven Shubert's request to participate by telephone. The undersigned arbitrators permitted Respondent Mr. Thomas Steven Shubert to file his response and attachment by fax and to participate in the hearing in this matter by telephone.

Respondents Brokers Investment Corporation and Messrs. Daniel H. Steinberg, Norman Shubert, and Thomas Steven Shubert did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to § 10301 of the Code and are bound by the determination of the arbitration panel on all issues submitted.

The undersigned arbitrators found that there was inadequate evidence to determine that Respondents Messrs. Martin W. May and Michael Grossman had been served with the Statement of Claim or with notice of the hearing in this matter. The undersigned arbitrators made no ruling as to the liability of Respondents Messrs. Martin W. May and Michael Grossman.

At the hearing in this matter, Respondent Mr. Thomas Steven Shubert moved to dismiss the claim against him personally. The undersigned arbitrators dismissed the claim against Respondent Mr. Thomas Steven Shubert at the conclusion of the hearing.

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. Brokers Investment Corporation and Messrs. Norman Shubert and Daniel H. Steinberg are jointly and severally liable for and shall pay Mr. Harold B. Hughes compensatory damages of \$408,750.00.
2. Brokers Investment Corporation and Messrs. Norman Shubert and Daniel H. Steinberg are jointly and severally liable for and shall pay Mr. Harold B. Hughes punitive damages of \$90,000.00 pursuant to Mr. Harold B. Hughes' petition.
3. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions:  $x \$750 = \$1,500$  in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Mr. Harold B. Hughes.

Pursuant to § 10333 of the Code, Brokers Investment Corporation is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$350.

Brokers Investment Corporation and Messrs. Norman Shubert and Daniel H. Steinberg are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$750 (= \$1,500 total forum fees - \$750 hearing session deposit by Mr. Harold B. Hughes).

Brokers Investment Corporation and Messrs. Norman Shubert and Daniel H. Steinberg are jointly and severally liable for and shall reimburse Harold B. Hughes for his hearing session deposit of \$750.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

**Concurring Arbitrators' Signatures**

/s/ Joe P. Lane

August 20, 1997

Joe P. Lane, Jr., Esquire  
Chairperson  
Public Arbitrator

Dated:

/s/ Larry N. Fagan

August 22, 1997

Larry N. Fagan

Dated:

Panelist  
Public Arbitrator

/s/ Nicholas James Douglas

August 26, 197

Nicholas James Douglas  
Panelist  
Industry Arbitrator

Dated:

**For NASD use only:**

**Date Award was served on the parties: September 5, 1997**