

## **AWARD**

**NASD Regulation, Inc.**

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### **In the Matter of the Arbitration Between:**

**BARBARA ARTHUR, LARRY DORR,  
KECK KIMBELL, WALDO SCHROEDER,  
SANDI SCHROEDER, ROGER WILLIAMS,  
LANI WILLIAMS, GARLAND C.  
CAMPBELL, JR., MARILYN CAMPBELL,  
PAUL S. LEWIS, DONNA LEWIS,  
WILLIAM C. ROCHA, DANA L. ROCHA,  
MARTIN E. SPONGBERG, ALISON L.  
SPONGBERG, FRITZ FRANKE and  
SHERRY FRANKE,**

**Claimants**

**NASD CASE NO. 98-00006**

**vs.**

**NUTMEG SECURITIES, LTD., JOHN  
LANE, MATTHEW K. ROCHLIN, TEXAS  
CAPITAL SECURITIES, INC., HAGAR  
BRYANT, PATRICK SMETEK, THOMAS  
BUCKLEY, STEWART MASTERSON,  
CLIFFE RECKLING and MICHAEL  
MCGINNIS**

**Respondents**

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### **REPRESENTATION OF THE PARTIES**

Claimants Barbara Arthur, Larry Dorr, Keck Kimbell, Waldo Schroeder, Sandi Schroeder, Roger Williams, Lani Williams, Garland C. Campbell, Jr., Marilyn Campbell, Paul S. Lewis, Donna Lewis, William C. Rocha, Dana L. Rocha, Martin E. Spongborg, Alison L. Spongborg, Fritz Franke and Sherry Franke, were represented by William S. Shepherd, Esq. of William S. Shepherd & Associates, P.C., located in Houston, Texas.

Respondents Nutmeg Securities, Ltd. ("Nutmeg") and Matthew K. Rochlin ("Rochlin") were represented by Dan R. Waller and Beth Ann Blackwood of Secore & Waller, L.L.P., located in Dallas, Texas.

### Case Information

Claimants' Statement of Claim was filed on or about May 12, 1998.

Claimants' Submission Agreements were signed in January of 1998.

Nutmeg and Rochlin's Answer and Uniform Submission Agreement were filed on or about June 8, 1998.

### Hearing Information

Pre-hearing conferences were held on:

- September 29, 1998 for one (1) hearing session with three arbitrators;
- January 20, 1999 for one (1) pre-hearing session with one arbitrator;
- February 17, 1999 for one (1) pre-hearing session with one arbitrator; and
- April 21, 1999 for one (1) hearing session with three arbitrators.

### Case Summary

Claimants brought this action alleging that Nutmeg issued a research report which contained material representations of fact and omitted material facts, causing Claimants to purchase shares in Skolniks, Inc. which they otherwise would not have purchased. Skolniks, Inc. filed bankruptcy over a year later, and Claimants allege that they suffered substantial losses. Claimants asserted causes of action for breach of federal and state securities statutes, breach of contract and warranties, breach of the Texas Business and Commerce Code statute for fraud, fraud, negligence, civil conspiracy, unjust enrichment, breach of fiduciary duty, DTPA, and RICO claims against Nutmeg, Rochlin, and the other Respondents.

Nutmeg and Rochlin denied the allegations made by Claimants, alleging that the report was true and accurate, and that Claimants did not rely on Nutmeg's research report in purchasing shares in Skolniks, Inc.

### Relief Requested

Claimants requested damages in the amount of \$1,579,386, plus post-judgment interest.

Respondents Nutmeg and Rochlin requested that the claims asserted against them be dismissed in their entirety.

### Other Issues Considered and Decided

Claimants withdrew without prejudice their claims against Respondent Stewart Masterson on October 16, 1998. Claimants withdrew with prejudice their claims against Respondents Hagar

Bryant and Michael McGinnis on February 18, 1999. In addition, Claimants withdrew without prejudice their claims against Respondent John Lane on April 30, 1998.

Claimants confirmed that they settled their claims against Respondents Texas Capital Securities, Inc., Patrick Smetek, Thomas Buckley and Cliffe Reckling on May 20, 1999.

### Award

After considering the agreement of the parties pursuant to the mediation before Maxel B. Silverberg, the undersigned arbitrators have decided in full and final resolution of these issues submitted for determination as follows:

1. That the parties perform the settlement agreement entered into between them pursuant to the mediation held before Maxel B. Silverberg;
2. That the undersigned arbitrator hereby order the expungement of this arbitration case from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. for the record of Matthew K. Rochlin (CRD number 1629493) and Nutmeg Securities, Ltd. (CRD number 18975);
3. That each party shall pay its own costs and attorneys' fees;
4. That this case be dismissed with prejudice as to Nutmeg Securities, Ltd. and Matthew K. Rochlin; and
5. That with the exception of forum fees addressed below, all claims and relief requests not specifically awarded are hereby denied in their entirety and dismissed with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and at the rate of \$300 for each pre-hearing session with a single arbitrator. There were two (2) hearing sessions with three arbitrators x \$1,000 plus there were two (2) pre-hearing sessions with a single arbitrator x \$300 = \$2,600 in forum fees. Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), a hearing sessions 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 Code, the NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$250 and the hearing session deposit in the amount of \$1,000 previously paid to the NASD Regulation, Inc. by the Claimants. By agreement of the parties, Claimants Barbara Arthur, Larry Dorr, Keck Kimbell, Waldo Schroeder, Sandi Schroeder, Roger Williams, Lani Williams, Garland C. Campbell, Jr., Marilyn Campbell, Paul S.

Lewis, Donna Lewis, William C. Rocha, Dana L. Rocha, Martin E. Spongberg, Alison L. Spongberg, Fritz Franke and Sherry Franke are jointly and severally liable for and shall pay to the NASD Regulation, Inc. the sum of \$300 in additional forum fees. Also by agreement, Respondents, Nutmeg Securities, Inc. and Matthew Rochlin are jointly and severally liable for and shall pay to the NASD Regulation, Inc. \$1,300 in forum fees.

**OTHER COSTS**

Pursuant to Rule 10333 of the Code, Respondent Nutmeg Securities, Inc. has paid to the NASD Regulation, Inc. the \$2,500 member surcharge and \$200 in pre-hearing processing fees previously invoiced. Respondent Texas Capital Securities, Inc. has paid to the NASD Regulation, Inc. the \$2,500 member surcharge and \$200 in pre-hearing processing fees previously invoiced. Furthermore, Respondent Nutmeg Securities, Inc. shall pay to the NASD Regulation, Inc. the sum of \$400 in additional pre-hearing processing fees and \$4,500 in hearing processing fees previously invoiced.

ARBITRATORS:

DATE:

  
Glen Allen Engle, Esq.  
Public Arbitrator, Chair

5/28/99

Henry R. Barracano  
Public Arbitrator, Panelist

James M. Alexander  
Industry Arbitrator, Panelist

For NASD use only:  
Date served:

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NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 98-00006  
Award - Page 4 of 4

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MAY 25, 1999