

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:  
**Robert Clauss v. Radcliffe St. Aubyn Bent**

Case Number: 99-1792

Hearing Site: Omaha, Nebraska

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**REPRESENTATION OF PARTIES**

Claimant, Robert Clauss ("Clauss"), hereinafter referred to as "Claimant": pro se.

Respondent, Radcliffe St. Aubyn Bent ("Bent"), hereinafter referred to as "Respondent": did not appear. Respondent was represented by Eric Hutner, Esq., Trachtenberg & Rodes, LLP, New York, New York, until on or about May 23, 2000.

**CASE INFORMATION**

Statement of Claim filed on or about: April 16, 1999

Claimant signed the Uniform Submission Agreement: April 12, 1999

Statement of Answer filed by Respondent on or about: July 2, 1999

Respondent signed the Uniform Submission Agreement: June 23, 1999

Claimant's Motion to Bar filed on or about: June 21, 1999

Respondent Bent's Response to Motion to Bar filed on or about: June 28, 1999

Claimant's Reply to Motion to Bar filed on or about July 12, 1999

Claimant's Motion to Compel and for Sanctions filed on or about: May 4, 2000

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud under the Federal Securities Exchange Act of 1934 and the rules promulgated thereunder, including Section 10(b) and Rule 10(b)-5; fraud under the Iowa Uniform Securities Act and the rules promulgated thereunder, including sections 401 and 404; common law fraud; breach of fiduciary duty; violation of applicable rules of the NASD; breach of contract; and unsuitability. The claims involve the sale of Holly Products warrants and shares.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the doctrine of laches; the applicable statutes of limitations; Claimant's losses were to a large extent attributable to Claimant's independent investment decisions; there is no private right of action under the NASD rules; damages, if any, suffered by Claimant, were the result of acts by parties other than Respondent over whom Respondent had no control; and the doctrine of unclean hands.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$47,525.00 plus interest, attorney's fees, and expenses associated with this proceeding, and punitive damages.

Respondent requested dismissal of the Statement of Claim, plus costs and disbursements of this action, including attorneys' fees, and such other relief as the Panel deems just and appropriate.

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Radcliffe St. Aubyn Bent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The Panel denied Claimant's Motion to Bar.

The Panel denied Claimant's Motion to Compel and for Sanctions.

The party present at the arbitration agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

#### **A) Finding of Fact:**

- 1.) Respondent Radcliffe St. Aubyn Bent committed fraud against Claimant under both federal and state statutes.

#### **B) Ruling:**

- 1.) Respondent, Radcliffe St. Aubyn Bent, is solely liable for and shall pay to Claimant Robert Clauss the sum of \$31,038.00 in compensatory damages;
- 2.) Respondent, Radcliffe St. Aubyn Bent, is solely liable for and shall pay to Claimant, Robert Clauss, interest calculated at 8.375% APR beginning to accrue on April 16, 1999, until paid in full pursuant to statute;

- 3.) Respondent Radcliffe St. Aubyn Bent is solely liable for and shall pay to Claimant Robert Clauss the sum of \$35,000.00 in punitive damages pursuant to Iowa Code Section 668A;
- 4.) Respondent Radcliffe St. Aubyn Bent is solely liable for and shall pay to Claimant Robert Clauss the sum of \$625.00 as reimbursement for fees retained by NASD Regulation, Inc.;
- 5.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 6.) That any relief not specifically enumerated, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$175.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is the Respondent's former firm.

Member surcharge (State Street Capital Markets Corp.) = \$ 800.00 (waived)

#### **Adjournment Fees**

Adjournments requested during these proceedings:

March 21-22, 2000, adjournment by Bent = \$ 600.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$600.00 = \$ 600.00  
Pre-hearing conference: October 19, 1999 1 session

One (1) Hearing session x \$600.00 = \$ 600.00

Hearing Date: May 23, 2000 1 session  
Total Forum Fees = \$1,200.00

The Panel has assessed \$ 450.00 of the forum fees to Robert Clauss.  
The Panel has assessed \$ 750.00 of the forum fees to Radcliffe St. Aubyn Bent.

**Fee Summary**

Claimant, Robert Clauss, be and hereby is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 625.00
Less payments	= \$ 625.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondent, Radcliffe St. Aubyn Bent, be and hereby is solely liable for:

Adjournment Fees	= \$ 600.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 1,350.00
Less payments	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 1,350.00

All balances are due to NASD Regulation, Inc.

**Concurring Arbitrators' Signature**

/s/ Hugh J. Perry  
Hugh J. Perry  
Public Arbitrator, Presiding Chair

06/27/00  
Signature Date

/s/ James R. Baratta  
James R. Baratta  
Public Arbitrator

06/29/00  
Signature Date

/s/ Steven R. Christenson  
Steven R. Christenson  
Industry Arbitrator

06/27/00  
Signature Date

06/30/00  
Date of Service (For NASD office use only)

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James R. Baratta  
Public Arbitrator

Signature Date

6/29/00  
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NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration # 98-1792  
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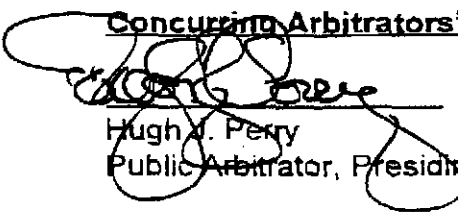
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Public Arbitrator, Presiding Chair

June 27, 2000  
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Signature Date

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James R. Baratta  
Public Arbitrator

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