

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION, INC.

CASE:01-00972

Peter and Grace Margarita, claimants vs. Wall Street Equities, Inc. respondent.

ATTORNEYS:

Claimants appeared Pro Se, Commack, NY.

For Respondent appeared Ronald Berti, Director of Compliance, New York, NY.

DATE FILED: February 27, 2001

CASE SUMMARY: Claimants alleged that respondents made trades in his cash account that exceeded the amount of cash he had in his account at the time of the trade, thereby causing a debit balance in his account.

ARBITRATOR'S REPORT: See attached Exhibit A

Claim Data

Claim: \$2,192.00
Filing Fees: \$75.00

Award Data

Award: \$.00
Filing Fees: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All other relief requests are denied. 3) The \$75.00 filing fee previously deposited with NASD Dispute Resolution, Inc. by the claimant, shall be retained by NASD Dispute Resolution, Inc.

OTHER FEES: Pursuant to Rule 10333 of the Code, respondent has paid to NASD Dispute Resolution, Inc. the \$150.00 Member Surcharge previously invoiced.


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Award 01-00972

Irene Donna Thomas, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Irene Donna Thomas, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Irene Donna Thomas, Esq.

8/20/01

Signature Date

Date of Service (for NASD Office Use Only)

Arbitrator's Decision – 01-00972

After careful consideration of the record, I make the following findings of fact:

On December 4, 2000, the Claimant, Peter A. Margarita, called Respondent, Wall Street equities, Inc. ("WSE") and inquired about the purchase of Adrien Arpel ("ADPL") securities. During this call, Claimant learned that the bid price of the stock at that time was \$.01 cent and the ask was \$.03 cents. That same day, by overnight mail, Claimant forwarded a money order to Respondent in the sum of \$1,128.00 to add to his then cash balance of \$3.00. On December 5, 2000, Claimant had a credit balance of \$1,128.00.

On December 6, 2000, Claimant called Respondent and placed an unsolicited, pre-opening, market order for the purchase of ADPL with an individual named "Sam." Specifically, Claimant placed an order for 33,000 shares of ADPL "at the market." Purchasing securities "at the market" generally means an order to purchase or sell securities without regard to price. At the time of his order placement, Respondent verbally warned Claimant that the closing price did not constitute a firm quote for the ADPL security but, nonetheless, purchased the number of ADPL shares specified by Claimant. At the time of the purchase, the ADPL shares sold for 0.01c.

At 9:50:10 a.m., Respondent notified Claimant that the purchase of ADPL

securities had been made at 9:31:09 a.m. at a price of 0.10c. At approximately 11:00 a.m., Claimant called Respondent protesting the purchase of the securities at 10c. He balked at paying the balance due of \$2,192.00. Respondent explained to Claimant that if he did not pay the balance, Claimant would first be given an extension to pay the balance. If the balance were still not paid, Respondent would "sell him out" and any difference would be indicated appropriately on Claimant's account. Claimant ultimately paid the balance due before the Settlement Date. The parties subsequently and timely submitted the issue to arbitration.

Discussion

The question in this case is whether the Respondent's policies required Claimant to have 100% of the transaction amount in his account before Respondent placed an order for the ADPL securities.

Claimant claims that he should be reimbursed the \$2,192.00 plus \$75 (filing and deposit fee) or a total of \$2,267.00 because as the owner of a cash account, the Respondent was only permitted to spend up to his limit of \$1,128.00 on OTC-Bulletin Board stocks. Respondent argues that the requirement to have 100% of the transaction amount in an account for the purchase of "penny stock" among other things is merely a guideline for its clients and brokers to follow when orders for low priced and thinly traded securities are placed. After careful consideration of the full record, I conclude that the case must be dismissed.

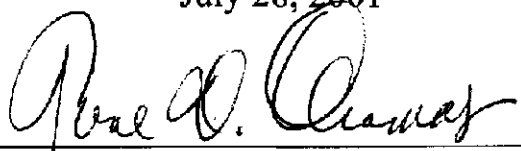
It is true as stated by Claimant that Respondent's advertisement strongly suggests that 100% of the transaction amount must be in the account prior to purchase. However, Claimant has not met his burden to show by a preponderance of the evidence that the Respondent is required to operate under the same guidelines for new and existing customers. Claimant has not demonstrated that Respondent violated any rule or regulation of the NASD or the SEC by purchasing the ADPL securities, at Claimant's unsolicited request, when he did not have 100% of the transaction amount in his account. This is true, even if I were to assume that Respondent told Claimant that he needed to have sufficient cash in his account to cover the full purchase price as Claimant alleged in his Statement of Claim, Claimant has still not shown that purchasing the stock "at the market", at his request, violated any rule or regulation of the NASD or the SEC.

Claimant's conduct seems to indicate, *prima facie* that he intended to merely purchase ADPL in an amount not to exceed \$1,128.00 because he forwarded a money order to the Respondent in an amount sufficient to bring his account to this amount. But, he never shared his intent with Respondent. On December 6, Claimant merely told Respondent to purchase ADPL "at the market." Respondent purchased ADPL for Claimant "at the market." Respondent's advertisement makes it clear that its services are for "experienced individual investors and traders." If Claimant, an ostensibly experienced individual investor

and trader, intended for Respondent to limit his purchase to the amount of his account, he should have made his intention clear. Thus, Claimant's suggestion that he did not want Respondent to purchase ADPL securities at a price other than .01 cent is simply not persuasive.

For the reasons outlined above, this case must be dismissed.

Dated: New York, New York
July 28, 2001



Irene Donna Thomas, Esq., Arbitrator