

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)

Sunnyside Pacnev Ltd., S.P.S. and)
Joan Marshall,)

Claimants)

Case #88-00117

vs.)

Award

Porcari, Fearnow & Associates, Inc.,)
Art Porcari,)
Sanders, Morris & Mundy, Inc.,)
York Securities, Inc.,)
David Corcoran,)
Q&R Clearing Corp., and)
Prudential-Bache Securities, Inc.,)

Respondents)

CASE SUMMARY

Claimants allege that they placed an order to sell 500 shares of CMS Advertising, Inc. through their broker employed by York Securities, Inc. (YSI), that the broker properly executed the trade and that on settlement date their account was credited with the proceeds from the sale. Claimants further allege that forty-three days after trade date the sale was cancelled and their account was debited in the amount of \$3,610.00 and another 1200 shares of said stock, which were in the possession of Porcari, Fearnow & Associates, Inc. (Porcari Fearnow), are now frozen, of diminished value and in the possession of Sanders, Morris & Mundy, Inc. (SMM).

Respondents, YSI and David Corcoran, deny liability and allege that Allan Marshall, the Registered Representative at YSI and also the President of Marshall Investment Group, a separate division of YSI under the New York Stock Exchange, was required to follow YSI supervisory rules. YSI further alleges that Allan Marshall disregarded firm policy and previous warnings when he bypassed the firm's OTC Department and executed the trade on his own through Porcari Fearnow. Respondent, YSI, further alleges that Claimants were free to sell the 1200 shares of CMS Advertising, Inc. Respondent, Q&R Clearing Corp. (Q&R), denies liability and denies it informed Claimants that it recognized the trades. Q&R alleges that as clearing broker for YSI it attempted unsuccessfully to clear the trade and upon instruction from YSI, it cancelled the trade. Q&R counterclaims against Claimant for the proceeds

from the sale. Respondents, Porcari Fearnow and Art Porcari, deny liability and allege Respondent, Prudential-Bache Securities, Inc. (Prudential), was responsible to execute a valid order undertaken by its clearing firm, Porcari Fearnow. Porcari Fearnow alleges that it did not process the trade, that after it had ceased operation it realized that the trade was not processed, that it informed Claimants and Prudential that the trade was good and should be confirmed and that Prudential refused to confirm the trade. Porcari Fearnow cross-claims against Prudential for its negligence or failure to act as required.

Respondent, Prudential, denies liability and cross-claims against Respondents, Porcari Fearnow and Art Porcari, for their failure to timely and properly enter the purchase order in issue. Prudential alleges that under the direction and permission of the NASD, it transferred accounts it previously cleared for Porcari Fearnow to SMM. Respondent, SMM, denies the allegations and alleges that although it agreed to act as broker for certain accounts formerly serviced by Porcari Fearnow, it did not assume any of Porcari Fearnow's liabilities or obligations.

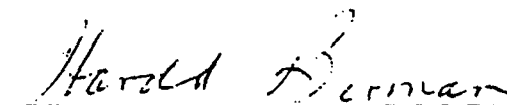
RELIEF REQUESTED

Claimants request that the Panel award them damages in the amount of \$8,425.00 for the 1200 shares in the frozen accounts, removal of the \$3,625.00 debit balance, costs and attorney's fees. Respondents collectively seek to have the Statement of Claim dismissed. Respondent, Q&R, requests that the Panel award it \$3,610.00 on its counterclaim against Claimants. Respondents, Art Porcari and Porcari Fearnow, seeks an award against Prudential for any award rendered against them. Prudential seeks an award against Art Porcari and Porcari and Fearnow for any award rendered against it.

AWARD

On June 22, 1989, the undersigned arbitrator heard the controversy between the parties as set forth in a submission to arbitration signed by Claimants, Sunnyside Pacnevt Ltd., S.P.S. and Joan Marshall, on January 12, 1988 and by Respondents, Prudential-Bache Securities, Inc., Sanders, Morris and Munce, Inc., York Securities, Inc., David Corcoran, and Q&R Clearing Corp., on April 28, 1988, March 18, 1988, March 2, 1988, March 2, 1988 and February 27, 1988, respectively. Respondents, Art Porcari and Porcari, Fearnow & Associates, Inc. did not execute Submission Agreements, but defended the claims without objection. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Porcari, Fearnow & Associates, Inc., is liable and shall pay Claimants Two Thousand Five Hundred and Sixty-Two Dollars and Fifty Cents (\$2,562.50).
2. Claimants request for damages resulting from the 1200 shares of CMS Advertising is denied.
3. Claimants are jointly and severally liable to Respondent, Q&R Clearing Corp, on the counterclaim and shall pay Three Thousand Six Hundred and Ten Dollars and Zero Cents (\$3,610.00).
4. All other claims are dismissed.
5. The parties shall each bear their respective costs, including attorneys' fees;
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200.00 filing fee previously deposited by the Claimant and shall assess Respondent, Porcari, Fearnow & Associates \$200.00 in forum costs.


Harold Berman, Esq.

Dated: July 20, 1989