

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between)

JULIAN B. PHILLIPS)

Claimant)

v.)

JEFF BAIR)

Respondent)

NASD NO. 87-02477

CASE SUMMARY

In a claim filed with the NASD on December 7, 1987, Claimant Julian B. Phillips ("Phillips") alleged that an unauthorized purchase of 1000 units of Utilitech, Inc. was made near the end of November 1986 for Phillips' securities account maintained at Rooney Pace, Inc. Phillips had previously authorized a purchase of 1000 units of Utilitech in September of 1986, which purchase was completed. Phillips alleged that his account representative, Jeff Bair ("Bair") contacted him by telephone and advised that the unauthorized purchase of 1000 units of Utilitech, Inc. had been made for Phillips' account in error and that Rooney Pace, Inc. would correct the error. To date this error has not been corrected.

Bair maintained that the second purchase of 1000 units of Utilitech, Inc. was authorized by Phillips, who wished to increase his position in this security. Bair maintained that he violated no rules or regulations and specifically made no unauthorized trade for Phillips' account. Additionally, Bair alleged that he had no communication with Phillips following the conversation wherein Phillips allegedly authorized the second purchase of 1000 units of Utilitech, Inc.

Rooney Pace, Inc., initially named a Respondent in this matter filed for bankruptcy and therefore, any suits or actions against Rooney Pace, Inc. are stayed by the applicable provisions of the federal bankruptcy code. Rooney, Pace, Inc. was therefore, removed as a Respondent in this matter.

RELIEF REQUESTED

Phillips requested \$10,500, plus interest and other charges as a result of the unauthorized trade, less the market value of the 1000 units of Utilitech, Inc., assessment of forum fees against Bair and an award of attorney's fees. Bair requested dismissal of the claim.

OTHER ISSUES

Bair failed to appear at the hearing in Memphis, Tennessee on July 21, 1989. NASD Arbitration Counsel recited for the panel the attempts made by the NASD to give Bair notice of the hearing date, time and location pursuant to Section 26 of the NASD Code of Arbitration Procedure. Bair had filed an answer to the claim as well as executed a uniform submission agreement and was represented by counsel until his attorney withdrew. The panel determined to proceed in Bair's absence pursuant to its discretion set forth in Section 29 of the NASD Code of Arbitration Procedure. Accordingly, Bair is bound by the panel's final determination on all issues submitted.

AWARD

On July 21, 1989 in Memphis, Tennessee during a hearing lasting one session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 2, 1987 by Claimant Julian B. Phillips and by Respondent Jeffrey Bair on October 4, 1988.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Bair is liable for and shall pay to Phillips, the principal sum of Nine Thousand Sixty-two Dollars and Fifty Cents (\$9,062.50), which sum represents the purchase price of 1000 units of Utilitech, Inc. on December 3, 1986, net of the fair market value of these 1000 units as of July 21, 1989 from the last known reported trade;

2. Bair is also liable for and shall pay to Phillips, the sum of Two Thousand One Hundred Sixty Dollars and Forty-four Cents (\$2,160.44) which sum represents the margin interest charged to Phillips' account as a consequence of the purchase of 1000 units of Utilitech, Inc. from and inclusive of December 3, 1986 through and inclusive of December 31, 1988 when Phillips paid for the trade;

3. Interest at the rate of 10% per annum is also awarded to Phillips on the \$10,500 purchase price from and inclusive of December 31, 1988 through and inclusive of July 21, 1989. This sum comes to Seven Hundred Dollars and Sixty-three Cents (\$700.63);

4. The sum total awarded to Phillips from Bair is therefore, Eleven Thousand Nine Hundred Twenty-three Dollars and Fifty-seven Cents (\$11,923.57);

5. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this proceeding; and

6. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$400.00 initially deposited with the NASD by Phillips and Bair shall pay directly to Phillips the sum of \$400.00 as forum fees.

BY THE PANEL

Dated: 8-3-89

S/SRaymond Clift, Esq.
Presiding Chair

Dated:8-4-89

S/SDavid E. Scott

Dated:8-3-89

S/SClaude Paddock

Date Served: 8-14-89