

m/c

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
FIRST UNION DISCOUNT BROKERAGE)
SERVICES, INC.,)
)
) Claimant,)
) Case #88-00106
vs.) Award
)
)
GEORGE SCHACHTER,)
)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

Arnold Y. Steinberg, Esq.
Virginia Rhyne
Douglas Delanoy, Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 12, 1988. The hearing was conducted in Fort Lauderdale, Florida, with a total of one session. Claimant, First Union Discount Brokerage Services, Inc. ("First Union"), alleged that as a result of the October 19, 1987 stock market crash, a margin call was generated in Respondent, George Schachter's ("Schachter") account which, after liquidating Respondent's account to pay said margin call, a debit balance remained which Respondent has refused to pay, giving rise to these claims of breach of contract and account stated. Respondent did not file an answer.

RELIEF REQUESTED

Claimant, First Union, requested damages of \$22,750.00 plus interest from October 30, 1987 to the date of the hearing.

AWARD

On June 8, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 30, 1987, and not signed by Respondent, Schachter, as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"). Respondent, Schachter being a customer who duly executed a written agreement to arbitrate (as evidenced on Page Two (2) of Claimant's Exhibit #A). Having considered the pleadings, the testimony, and the evidence presented at the hearing and George Schachter having failed to appear at the hearing, notwithstanding his knowledge of this arbitration as evidenced by Arbitrator's Exhibit #2(a) through 2(k), this panel has determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, Claimant has agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD, Inc.

2. Respondent, Schachter, shall be and hereby is liable and shall pay to to Claimant the amount of Twenty Two Thousand Seven Hundred Fifty (\$22,750.00) Dollars plus interest at the legal rate of 12% per annum from November 1, 1987 to June 8, 1989 in the amount of Four Thousand Three Hundred Twenty Two and 50/100 (\$4,322.50) Dollars, for a total of Twenty Seven Thousand Seventy Two and 50/100 (\$27,072.50) Dollars.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, Schachter, shall be and hereby is assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars payable directly to the Claimant. The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant for such forum fees.
4. Claimant's request for attorneys' fees shall be and hereby is dismissed in all respects.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

1. Jurisdiction exists by virtue of the Agreement to Arbitrate evidenced on Page Two (2) of Claimant's Exhibit #A executed by Respondent and pursuant to Section 12(a) of the Code.
2. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondent, Schachter, the reasons will again be set forth here. The NASD, Inc. served Schachter by Certified Mail with the Statement of Claim in this matter and has made every attempt to locate and serve Respondent with Notice of this hearing as demonstrated by the following record evidence:
 - a. April 21, 1988, Service of Claim on Schachter was sent to 8500 S.W. 133 Avenue Road, Apartment #301, Miami, FL 33183 by Certified Mail as evidenced by Arbitrator's Exhibit #2(a). This was returned marked "unclaimed" by Postal Service as evidenced by Arbitrator's Exhibit #2(b).
 - b. May 24, 1988, Service of Statement of Claim on Schachter by regular mail at same address evidenced by Arbitrator's Exhibit #2(c) (which was never returned to the NASD, Inc.).
 - c. August 3, 1988, Notice of Failure to file an Answer sent to Respondent, Schachter, at same address. evidenced by Arbitrator's Exhibit #2(d) and returned as "unclaimed" as evidenced by Arbitrator's Exhibit #2(e).
 - d. September 30, 1988, Notice of Failure to File Answer sent by regular mail to same address (Arbitrator's Exhibit #2(f)) and never returned to the NASD, Inc.
 - e. January 20, 1989, Hearing Confirmation Letter sent to Respondent, Schachter, at same address with signed Certified Mail return receipt (Arbitrator's Exhibit #2(g)).

- f. April 21, 1989, Case Packet including the Hearing Advance Sheet setting forth date, time, and place of the hearing sent to Respondent, Schachter, at same address as evidenced by Arbitrator's Exhibit #2(h), and returned to the NASD, Inc. marked "unclaimed" by Postal Service (Arbitrator's Exhibit #2(i)).
- g. May 19, 1989, Case Packet including the Hearing Advance Sheet sent to Respondent, Schachter, by regular mail at same address and never returned to the NASD, Inc. (Arbitrator's Exhibit #2(j)).
- h. May 9, 1989, Notice of Replacement Arbitrator sent to Respondent, Schachter, at same address, along with a copy of the case packet by Certified Mail, and returned to the NASD, Inc. marked "unclaimed" by Postal Service as evidenced by Arbitrator's Exhibit #2(k).

ARBITRATORS CONCURRING

Arnold Y. Steinberg, Esq., Virginia Rhyne and Douglas Delanoy, Jr.

Dated: June 22, 1989