

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
SANDRA H. GILBERT and)
FRANK G. WILKINS, JR.,)
) Claimants.)
) Case #88-02867
vs.) Award
)
POWER SECURITIES, CORP.,)
) Respondent.)
)

Heard before the member of the Arbitration Panel:

H. Steven Holtzman, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on September 13, 1988. The hearing was conducted in Tampa, Florida on November 16, 1989 with a total of 1 session.

Claimants Frank Wilkins, Jr. ("Wilkins") and Sandra Gilbert ("Gilbert"), alleged that Respondent Power Securities Corporation ("Power") was liable for the execution of unauthorized trades in their account by its employee David Droubay ("Droubay"). Respondent Power neither filed an answer nor appeared at the hearing.

RELIEF REQUESTED

Claimant requested damages in the amount of \$1600.00 plus interest and other costs. Respondent failed to file an answer.

AWARD

On November 16, 1989, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on September 8, 1988, and not signed by Respondent as required pursuant to Section 12(a) of the NASD, Inc. Code of Arbitration Procedure. Respondent being an NASD member during the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing and Respondent neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding Respondent's knowledge thereof as evidenced more fully below, the arbitrator has determined in full and final resolution of the issues submitted for determination as follows:

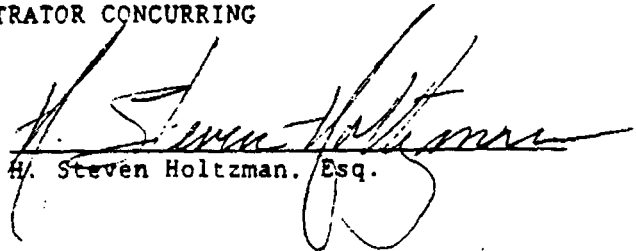
1. Jurisdiction exists pursuant to Sections 12 and 13 of the NASD Code of Arbitration Procedure.
2. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondent, the reasons will again be set forth here. The NASD, Inc. has made every attempt to locate and serve Respondent with notice of this hearing as demonstrated by the following record evidence:
 - a). January 15, 1989, Letter enclosing Statement of Claim and Submission Agreement sent by certified mail to Joseph McDonough at 302 E. Carson Avenue, Las Vegas, NV 89101 (while no receipt was returned to the NASD, Inc., neither was this mail ever returned as unclaimed; evidenced in Arbitrator's Exhibit #2(a)).
 - b). February 7, 1989, Letter indicating non receipt of Respondent's Answer sent by certified mail to Joseph McDonough at Respondent's Las Vegas address (while no receipt was returned, neither was this mail ever returned as unclaimed; evidenced in Arbitrator's Exhibit #2(b)).
 - c). May 8, 1989, Confirmation memo setting forth the date of the hearing sent by certified mail to Joseph McDonough at Respondent's Las Vegas address (while no receipt was returned, neither was this mail ever returned as unclaimed; evidenced in Arbitrator's Exhibit #2(c)).
 - d). August 30, 1989, Hearing Advance Sheet setting forth the time, date and location of the hearing sent by certified mail to Joseph McDonough at 1541 So. Vine Street, Denver, Colorado 80210 (Receipt returned; evidenced in Arbitrator's Exhibit #2(d)).
 - e). October 2, 1989, Letter received from Joseph McDonough indicating that he no longer worked for Respondent and, therefore, did not plan on attending the hearing; (evidenced in Arbitrator's Exhibit #2(e)).
 - f). November 9, 1989, Staff Attorney Alan Foxman called Joseph McDonough who informed Mr. Foxman that he was the compliance officer of Respondent at the time of the complained of transactions and when he left Respondent. Mr. Donough turned his files over to Respondent's corporate counsel who has also left Respondent's employ. Mr. McDonough informed Mr. Foxman that Arthur Salzberg was representing Respondent. (evidenced in Arbitrator's Exhibit #2(f)).

- g). November 9, 1989, Staff Attorney Alan Foxman called Arthur Salzberg who informed Mr. Foxman that, although he was in contact with Mr. McDonough regarding other matters, Mr. Salzberg was not aware of this proceeding. Mr. Foxman informed Mr. Salzberg that the Statement of Claim, Uniform Submission Agreement, NASD Code of Arbitration Procedure and Hearing Advance Sheet would be Federal Expressed to him for review. Mr. Salzberg indicated he would have to confer with Respondent to determine if Respondent wanted him to handle this case. (evidenced in Arbitrator's Exhibit #2(f)).
- h). November 9, 1989, Statement of Claim, Uniform Submission Agreement, NASD Code of Arbitration Procedure and Hearing Advance Sheet sent by Federal Express to Arthur Salzberg at 2828 Pennsylvania Avenue, Washington, D.C. 20007 (no phone call was received from Federal Express informing the NASD of non delivery; evidenced in Arbitrator's Exhibit #2(g)).
3. Respondent is hereby liable and shall pay to Claimants the amount of One Thousand Eight Hundred Forty and 00/100 (\$1,840.00) Dollars inclusive of interest at the rate of 12% per annum.
4. Respondent is hereby liable and shall pay to Claimants the further amount of Two Hundred Sixty-Five and 00/100 (\$265.00) Dollars as costs.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrator has assessed Respondent forum fees in the amount of Two Hundred and 00/100 (\$200.00) Dollars payable directly to the Claimants. The NASD, Inc. shall retain the Two Hundred and 00/100 (\$200.00) Dollar filing fee previously deposited by the Claimant.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATOR CONCURRING


H. Steven Holtzman, Esq.

Received this 29th day of November, 1989.