

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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| In the Matter of the Arbitration Between |) | |
| Garrett Cacciaguidi |) | |
| Barbara Cacciaguidi |) | |
| |) | |
| Claimants |) | |
| vs. |) | AWARD |
| |) | |
| Discount Brokerage Service |) | NASD #88-03450 |
| Financial Clearing & |) | |
| Services Corporation |) | |
| Respondents |) | |

REPRESENTATION

Claimants were represented by Steven M. Green, Esq., San Diego, California.

Respondents were represented by Bradley D. Ross, Esq., of Sachs & Phelps, Los Angeles, California.

SUMMARY OF ISSUES

Claimants alleged failure to execute trades as instructed, unauthorized transactions, misrepresentation, errors in handling the trading account and in transferring funds from the bank account maintained for this purpose, and failure to execute orders with respect to trading in common stocks.

Respondents denied all allegations of wrong-doing, and asserted that Claimant Garrett Cacciaguidi was an experienced, sophisticated investor who engaged in frequent aggressive, risky trading of volatile issues, and who, by determining to use the services of a discount brokerage service, must assume full responsibility for his trading decisions.

Respondent Financial Clearing further denied any liability for Claimants' alleged losses by virtue of its position as the clearing broker for Discount Brokerage Service.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages, as amended at hearing, of approximately \$200,000, plus interest, costs, and attorney's fees.

Respondents requested dismissal of all claims.

DAMAGES AND RELIEF AWARDED

This claim was filed with the NASD on November 4, 1988, against Discount Brokerage Service. On February 9, 1990, Claimants filed an action against Financial Clearing & Services Corporation, Security Pacific Corporation, North County Bank, and North County Bancorp in the Superior Court for the County of San Diego, California, Case No. 620918. This action was dismissed and the parties referred to arbitration. An amended Statement of Claim naming Financial Clearing & Services, North County Bank and North County Bancorp as respondents in this arbitration was filed with the NASD on January 29, 1990. The undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on May 23, 1989, by an authorized representative of Security Pacific Investments, Inc., (parent corporation of Discount Brokerage Service) on April 11, 1989, and by an authorized representative of Financial Clearing & Services on June 5, 1990. North County Bank and North County Bancorp did not submit to voluntary jurisdiction of the NASD and were dismissed as Respondents. The hearing was conducted in San Diego, California, as follows:

Pre-hearing telephone conferences were held as follows

| | |
|---------|-----------|
| 6/15/90 | 1 session |
| 6/21/90 | 1 session |

The evidentiary hearing was held as follows:

| | |
|-------------------|-------------------|
| 6/27/91 | 2 sessions |
| 6/28/91 | 2 sessions |
| 9/26/91 | 2 sessions |
| <u>9/27/91</u> | <u>3 sessions</u> |
| 11 sessions total | |

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 as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$17,500.00 exactly.

2. The parties shall each bear their respective costs including attorneys' fees.

3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 fee previously deposited by the Claimants as an assessment of forum fees. In addition, Respondents are jointly and severally assessed forum fees of \$10,000.00, payable to the NASD.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

DATE SERVED: 10/24/91

Alexandra Kwoka, Esq.

Marjorie B. Newsom