

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Robert Rosario

Claimant

vs.

Fahnstock & Co., Inc.

Respondent

AWARD

CASE NO. 89-01049

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 7, 1989. On April 29, 1988, Claimant placed a good until cancelled order with Respondent to sell 20,000 shares of Pacific Energy Resources at \$3.00 per share. Claimant received confirmation of the sale of 5,000 shares on May 3, 1988 and a further 5,000 shares sold on May 5, 1988, and received two checks from Respondent totaling \$29,600.00 for the two transactions. In approximately the third week of August, 1988, Respondent notified Claimant that there had been a duplication of the first 5,000 share sale transaction and demanded reimbursement of \$14,800.00 representing the proceeds from the second 5,000 share sale transaction. When Claimant disputed the claim, Respondent froze the remaining securities in Claimant's account and put a stop transfer on 17,000 shares of Maxicare owned by Claimant.

Claimant alleged that the two sale transactions of Pacific Energy had different order numbers and were not duplicate transactions; and that if they were duplicate transactions, he was entitled to keep the proceeds as Respondent failed to notify him within a reasonable period of time which would have allowed him to enter another sales order. Claimant further alleged damages as a result of Respondent's placing a stop transfer on his Maxicare shares and freezing the assets in his account.

Respondent maintained that the second sale of 5,000 shares of Pacific Energy was a duplication of the first transaction, and upon discovery by Respondent, Claimant was timely notified and is not entitled to the proceeds of a transaction that never took place. Respondent further alleged a counterclaim for the existing debit balance owed by Claimant.

DAMAGES AND RELIEF REQUESTED

Claimant requested actual damages in the amount of \$34,505.00 plus interest, punitive damages of \$50,000.00 and dismissal of the counterclaim.

Respondent requested dismissal of the claim and actual damages in the amount of \$9,800.00 plus costs and attorneys' fees.

DAMAGES AND RELIEF AWARDED

On April 4, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 10, 1989 and by Respondent on May 31, 1989. The hearing was held in Beverly Hills, California and lasted one session. 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. Claimant is awarded the sum of Twenty Thousand, Four Hundred Fifty-Five Dollars and Zero Cents (\$20,455.00). This award is determined on the basis of an award in Claimant's favor in the amount of \$30,255.00 which was offset against an award in favor of Respondent's counterclaim in the amount of \$9,800.00.

2. Respondent is further directed to release the stop transfer on Claimant's Maxicare shares and to release the hold on Claimant's Pacific Energy Resources shares currently frozen in Claimant's account.

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

4. Pursuant to Section 43 of the NASD Code of Arbitration Procedure:

- a. the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant; and
- b. Respondent is liable for and shall pay to Claimant the sum of \$500.00 representing the filing fee and shall reimburse Claimant directly.

OTHER ISSUES

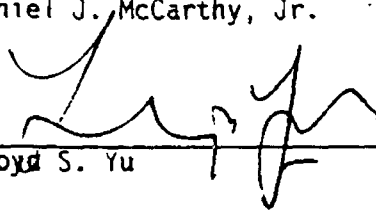
The parties stipulated to the execution and service of the award in counterpart copies.

PRESIDING ARBITRATORS

DATE SERVED: 05/18/90

Chet Olsen

Daniel J. McCarthy, Jr.



Lloyd S. Yu

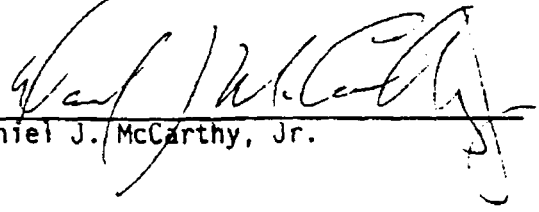
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