

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
FERDINAND D. SCHUPBACH.)
) Claimant,)
) Case #89-01402
vs.) Award
)
BARNETT BROKERAGE SERVICES, INC.,)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

H. Steven Holtzman, Esq.
Mr. Hal S. Holtsinger
Mr. Joseph J. Haverly

CASE SUMMARY

This claim was filed with the NASD, Inc. on May 11, 1989. The hearing was conducted in Tampa, Florida on May 18, 1990 with a total of 1 session.

Claimant, Ferdinand Schupbach ("Schupbach"), alleged that Respondent, Barnett Brokerage Service, Inc. ("Barnett"), was liable for executing an unauthorized trade in Claimant's account. Claimant alleged that: he had inquired about selling short some DuPont stock but decided against it after talking to one of Respondent's employees on October 16, 1987; on October 19, 1987 he decided to sell short some Dow Chemical; on that date Respondent's employee, without authorization, sold short DuPont and when Claimant refused to cover the short sale, Respondent's employees covered the sale by purchasing DuPont and charged it to Claimant's account.

Respondent alleged that: any loss was due to Claimant's failure to make a timely withdrawal of the DuPont short sale placed on October 20, 1987; Claimant did not cancel all orders until October 21, 1987; Respondent acted pursuant to Claimant's express orders; and Claimant had placed an order to sell short the DuPont stock on October 20, 1987.

RELIEF REQUESTED

Claimant requested damages in the amount of \$12,945.41 plus \$3,000 in punitive damages. Respondent requested dismissal of the claim.

AWARD

On May 18, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 5, 1989, and by Respondent on August 25, 1989. 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. The parties have 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, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondent, Barnett, is hereby liable and shall pay to the Claimant the amount of Six Thousand Four Hundred Seventy Two and 71/100 (\$6,472.71) Dollars.
3. Claimant's request for punitive damages is hereby dismissed in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Claimant forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars (\$400 x 1 session). 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 in full satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

H. Steven Holtzman, Esq.
Mr. Hal S. Holtsinger
Mr. Joseph J. Haverly

Dated: June 4, 1990