

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
 )  
DAVID BUDIN, )  
 )  
 ) Claimant, )  
 ) Case #89-01501  
vs. ) Award  
 )  
INDIVIDUAL SECURITIES, LTD. )  
STEPHEN SCHWARTZ. )  
DOMINICK & DOMINICK, INC., and )  
DOMINICK INVESTOR SERVICES CORPORATION, )  
 )  
 ) Respondents. )  
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Heard before the member of the Arbitration Panel:

Marina Shank-Klein, Esq.

CASE SUMMARY

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

Claimant David Budin ("Budin") alleged that Respondents Individual Securities, Ltd. ("Individual") Stephen Schwartz ("Schwartz") Dominick & Dominick, Inc. ("Dominick") and Dominick Investor Services Corp. ("D.I.S.C.") were liable for the failure to execute a sell order of certain stock and warrants.

Respondents Dominick and D.I.S.C. alleged that: pursuant to the clearing relationship among Dominick, Individual and Budin, they should not be held responsible for the alleged failure to act; Individual was not the agent of Dominick for whose acts Dominick was responsible as principal; and Dominick was not liable to Claimant for enforcement of its rights under its clearing agreement with Individual.

Respondent Schwartz alleged that: the transaction was duly processed and confirmations of sale were sent to Claimant; the failure to pay Claimant was the responsibility of Individual and Dominick; and Schwartz cannot be held liable for the wrongs or failures of his employer absent his own individual wrongdoing.

Respondent Individual failed to file an answer and did not provide a defense at the hearing.

## RELIEF REQUESTED

Claimant requested damages in the amount of \$5,679.42 Respondents Schwartz, Dominick, and D.I.S.C. requested dismissal of the claim. Respondent Individual did not defend.

## AWARD

On March 1, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 16, 1989, and by Respondents Schwartz on June 8, 1989 and Dominick and D.I.S.C. on July 19, 1989 and not filed by Individual as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"), Respondent Individual being an NASD member firm at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing, and Individual neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding its knowledge of this arbitration as evidenced more fully in Arbitrator's Exhibit #2, 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 Code.
2. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondent Individual, the reasons will again be set forth here. The NASD, Inc. has made every attempt to locate and serve Respondent Individual with Notice of this hearing as demonstrated by the following record evidence:
  - a). January 5, 1989, Service of Claim on Individual c/o Mark Ross Sr. at 20 Broad Hollow Rd., Melville, N.Y. 11747 by regular mail (as evidenced in Arbitrator's Exhibit #2(a)).
  - b). September 29, 1989, Service of Overdue Answer notice on Individual c/o Mark Ross Sr. at the Melville, N.Y. address by certified mail (receipt returned showing delivery on October 14, 1989 as evidenced by Arbitrator's Exhibit #2(b)).
  - c). September 29, 1989, Memorandum indicating that the pleadings stage is now complete sent by regular mail to Individual c/o Mark Ross Sr. at the Melville, N.Y. address (evidenced by Arbitrator's Exhibit #2(c)).
  - d). November 7, 1989, Confirmation memo setting forth the date of the hearing sent by certified mail to Individual c/o Mark Ross Sr. at the Melville, N.Y. address (receipt returned showing delivery on December 21, 1989 as evidenced by Arbitrator's Exhibit #2(d)).

- e). December 26, 1989. Letter from Carl Lanzisera stating that he could not accept service for Mark Ross (as evidenced by Arbitrator's Exhibit #2(e)).
  - f). February 23, 1990. Letter received from Carl Lanzisera stating that Individual went out of business and that no representative from Individual would appear at the hearing (as evidenced by Arbitrator's Exhibit #2(f)).
  - g). March 1, 1990. Carl Lanzisera appeared by telephone at the hearing as a witness. He testified under oath that he was the past president of Respondent Individual, that he was representing Individual in this matter, and that he chose not to present any defense (evidenced in the record of proceedings).
- 3. Respondent Schwartz, Dominick and D.I.S.C. are not liable and therefore all claims against them are hereby dismissed.
  - 4. Respondent Individual is hereby liable and shall pay to the Claimant the amount of Five Thousand Six Hundred Seventy Nine and 42/100 (\$5,679.42) Dollars.
  - 5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrator has assessed Respondent Individual forum fees in the amount of Two Hundred and 00/100 (\$200.00) Dollars payable directly to the Claimant as a return of his filing fee. The National Association of Securities Dealers, Inc. shall retain the Two Hundred and 00/100 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, including attorney's fees.

#### OTHER ISSUES

None.

ARBITRATOR CONCURRING

  
Marina Shank-Klein

Dated: March 15, 1990