

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

BRIAN A. GROVE

Claimant

and

FIRST COMMERCE INVESTMENT SERVICES AND
BOB BROWN

Respondents

CASE NO. 89-03182

CASE SUMMARY

In a Statement of Claim filed with the NASD on November 14, 1989, Claimant Brian A. Grove ("Grove") alleged that Respondents First Commerce Investment Services ("First Commerce") and Bob Brown ("Brown") improperly executed an order and then failed to adequately provide options to correct and compensate for the error. According to the Statement of Claim, Grove placed a good until cancelled order with Brown to sell 15 C.R. Band August 22 - 1/2 put contracts at a limit price of 1 - 1/8. The order did not fill that morning and the sell order price was changed to \$1. After the market close, Grove was informed that the puts were sold in error at 3/4 and not 1 and that Brown was attempting to break the trade. Grove was later informed by Brown that the trade was erroneously entered as a market order, was unable to be broken and that Groves only option was to accept the 1/4 difference between the 3/4 sales price and \$1 limit price in waived future commissions. The options expired the next day and no other alternative was given to Grove. Grove further alleges that had the good until cancelled order been properly entered at a limit price of \$1, the sell order would have filled not on August 17th, but on the opening of August 18th at the opening price of \$3.

In separate Statement of Answers filed with the NASD on January 10, 1990, Respondents First Commerce and Brown admit that the erroneous trade was made, but deny that Grove was pressured into taking the offer of waived future commission. Respondents affirmatively state that Grove accepted the offer of restitution and seemed happy with the result; Grove was not coerced into accepting the offer; Grove received the sale price he sought; and Grove cannot be allowed to trade in hindsight simply because the transaction was settled unusually.

RELIEF REQUESTED

Claimant requested that an award be entered against Respondents for \$3,375.00 plus interest from August 8, 1989, costs of this action, and any other reasonable damages which may be proved.

Respondents requested that the Statement of Claim be dismissed and denied in its entirety.

PRELIMINARY MATTERS

Respondents First Commerce and Brown filed with their answers Motions to Dismiss on the pleadings, or, in the alternative, Motions for a decision on the pleadings and evidence without a hearing. After review, Respondents Motion to Dismiss was denied by the arbitrator. Furthermore, Claimant did not consent to submitting the matter to the arbitrator on the papers pursuant to Section 13 of the NASD Code of Arbitration Procedure and therefore, this motion was also denied.

Claimant presented at hearing a Motion to Bar Respondents Answers pursuant to Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure. After hearing argument and evidence from the parties, the motion was denied by the arbitrator.

AWARD

On July 27, 1990, in Houston, Texas during a hearing lasting 1 session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on October 27, 1989 by Claimant Brian A. Grove, December 22, 1989 by Dale A. Kaliszeski on behalf of Respondent First Commerce Investment Services, Inc. and on December 22, 1989 by Respondent Bob Brown.

Having considered the pleadings, the testimony, and the evidence presented at the hearing, I have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents First Commerce Investment Services, Inc. and Bob Brown are jointly and severally liable for and shall pay to Claimant Brian A. Grove the sum of \$3,375.00 plus interest at the rate of 6% per annum from August 18, 1989 until said amount is paid to claimant;

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

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund as forum fees, the \$100.00 filing fee previously deposited with the NASD by the Claimant Brian A. Grove. Respondent First Commerce Investment Services, Inc. shall be liable for and shall pay forum fees to the NASD in the amount of \$100.00.

Dated: August 30, 1990 /s/

Presiding Arbitrator

Michael E. McGown
Michael E. McGown, Esq.