

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ella Turk

90-00042

Name of Respondent(s)

Boenning & Scattergood

vs.

Francis Simola
Martin W. Dowdell

Heard before:

Name	Public/Industry
Richard B. Laden, Esq.	Public Arbitrator
Harold Stein	Public Arbitrator
Allen Lang	Industry Arbitrator

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 2, 1990. Claimant Ella Turk alleged that Respondents Boenning & Scattergood and Martin Dowdell failed to purchase stock entitled Patlex Corporation after she allegedly gave Respondent Dowdell a \$15,000.00 check to make the purchase. Claimant alleged that Respondent Martin Dowdell deposited the check into the account of her son-in-law, Francis Simola. Respondent Boenning and Scattergood maintained that the broker, Martin Dowdell, advised them that he was never instructed to open an account for Ella Turk. Respondent Boenning and Scattergood also asserted a Motion to Dismiss the claim pursuant to Section 16 of the Code of Arbitration Procedure. Respondent Francis Simola maintained that the \$15,000.00 check of the Claimant was allegedly deposited into his account to double the buying power in Mr. Simola's account. Respondent Martin Dowdell did not file a Statement of Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages of \$15,000.00 plus interest. Respondent Boenning & Scattergood requested that the claims of the Claimant

be dismissed pursuant to Section 16 of the Code of Arbitration Procedure or, alternatively, asserted third party claims against Martin Dowdell and Francis Simola for indemnification, attorneys fees and costs. Respondent Francis Simola asserted a counterclaim against Boenning & Scattergood and a cross claim against Martin Dowdell for \$160,000.00, unspecified punitive damages, all fees and costs.

AWARD

On March 6, 1991 in a pre-hearing conference with the panel chairman and on March 15, 1991 in Philadelphia, Pennsylvania during a hearing lasting one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant Ella Turk on December 12, 1989, by Respondent Boenning & Scattergood on March 30, 1990, by Respondent Francis Simola on June 26, 1990, and not signed by Respondent Martin Dowdell as required by Sections 12 and 25 of the Code of Arbitration Procedure. Respondent Martin Dowdell did not file a Statement of Answer as required by Sections 12 and 25 of the Code of Arbitration Procedure despite due notice being given. Respondent Martin Dowdell did appear at the hearing on March 15, 1990. After considering the pleadings, the testimony, and the evidence presented, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) The Motion to Dismiss of Respondent Boenning & Scattergood to dismiss the Claimant's claims pursuant to Section 16 of the Code of Arbitration Procedure be and hereby is granted. For this reason, all other claims of Respondent Francis Simola arising out of this matter are dismissed.
- (2) The parties shall each bear their respective costs, including attorneys fees.

FORUM FEES

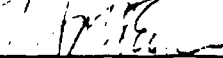
Pursuant to Section 43c of the Code of Arbitration Procedure:

- (1) The NASD shall retain \$200.00 of the \$400.00 filing fee previously deposited by the Claimant. The NASD shall retain the \$750.00 filing fee previously submitted by Francis Simola.

Concurring Arbitrator(s) Signature



Richard B. Laden, Esq.
(chairperson)



Harold Stein



Allen Lang

Date of Decision: March 15, 1981