

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )	
<u>Name of Claimant(s)</u> )	
Alexander G. Rappaport )	
)	Case No. 90-00116
<u>Name of Respondent(s)</u> )	
First Union Brokerage Services, Inc. )	

Heard before the members of the Arbitration Panel:

George S. Coit, Jr., Esq.	Public
Eugene B. Harper	Industry
Joseph A. Weston	Public

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 8, 1990. Claimant, Alexander Rappaport ("Rappaport"), alleged that Respondent, First Union Brokerage Services, Inc. ("First Union"), was liable for failing to provide Claimant with any indication that a sale of certain stocks had been executed. Since the sale was to be made at a limited price, Claimant assumed that the sale had not been made in the absence of a confirmation. Consequently, the following day Claimant again sold the same stocks that had already been sold without confirmation and Respondent perceived that sale to be a short sale. These shares would have been in Claimant's account but for Respondent's failure to confirm the initial sale and Respondent's subsequent erroneous short sale.

In a Statement of Answer filed by Respondent on May 4, 1990, First Union alleged that: Claimant is a sophisticated investor; First Union mailed a confirmation of the initial sale to Claimant on the day following the sale; Claimant did not inquire whether the sale had been executed when he placed the second sell order; Claimant's failure to inquire as to the status of the initial sell order constituted negligence and is the sole proximate cause of Claimant's damages; Claimant failed to mitigate his damages; First Union exercised reasonable care; Claimant is estopped from claiming damages; and, Rappaport has failed to state a claim for relief because he has failed to allege the basis for any duty allegedly breached by First Union.

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$69,776.00.

Respondent requested dismissal of the claim.

**AWARD**

On January 15, 1991, in Tampa, Florida, during a hearing lasting 3 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Rappaport, on December 15, 1989, and signed by Raymond White, Jr. on behalf of Respondent, First Union Brokerage Service, Inc., on May 1, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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.
2. Respondent, First Union is found not liable and, therefore, all claims against it are hereby dismissed.

**FORUM FEES**

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (3 sessions x \$500.00 per session). Claimant is hereby assessed \$750.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof. Respondent, First Union is hereby assessed \$750.00 payable to the National Association of Securities Dealers, Inc.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

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George S. Coit, Jr., Esq.

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Eugene B. Harper

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Joseph A. Weston

Date of Decision: February 12, 1991