

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimants

Paul J. Konecny,
Paul J. Konecny as Custodian For
Christopher P. Konecny &
Joanne E. Buono

vs

90-00769

Name of Respondents

Michael Carber
Alexander G. Minella
Parsons Eng
Wall Street Clearing Co.

Heard before the members of the Arbitration Panel:

Name

Robert D. Owen, Esq.

Public/Industry

Public - Chairperson

Milton H. Lehrer

Public

Paul Soper

Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 14, 1990. Claimants allege that Respondents engaged in a fraudulent scheme of making unauthorized trades in the Claimants' accounts and other customers' accounts. Claimants further allege that Michael Carber, Senior Account Executive, assigned to his account advised them that the trades were made in error and that they would be cancelled but later stated that Respondent, Wall Street Clearing Company, the clearing firm, would not process the cancellations. Claimant, Paul Konecny, contends that he advised Dennis Fitzgerald of Wall Street Clearing of these unauthorized trades and that Fitzgerald failed to cancel the trades.

In a Statement of Answer filed with the NASD on August 15, 1990, Respondent, Dennis Fitzgerald moved to dismiss the claims based upon the fact that he was acting as an employee of Wall Street Clearing Co.. Wall Street Clearing Co. also filed a Statement of Answer, Counterclaim and Cross Claim on said date. Wall Street denies liability and contends that as clearing agent for Wakefield Financial Corporation, it processed trades of Componentguard, Inc.

in Claimants' accounts and when payment for the securities was not received the accounts were liquidated in accordance with federal securities laws leaving a debit balance of \$58,657.93. Wall Street also contends that if the trades were unauthorized then Respondent, Michael Carber, is jointly and severally liable for the debit balance.

In a Statement of Answer filed with the NASD on July 06, 1990, Respondent, Michael Carber, admits that he was the registered representative assigned to Claimants' accounts. However, he denies the allegations of wrongdoing and contends that all trades were authorized by Paul Konecny. He further interposes three Affirmative Defenses.

In a Statement of Answer filed with the NASD on March 29, 1990, Respondent, Parsons Eng, denies knowledge of the allegations and denies liability. He also interposes four Affirmative Defenses.

RELIEF REQUESTED

Claimants request that the panel direct Wall Street Clearing Co. to remove all fraudulent transactions from Claimants' accounts and charge them to Wakefield Financial Corporation thereby eliminating the debit balances and reestablishing the credit balance in the Buono account. Alternatively, Claimants request that the panel award them the costs of the original fraudulent transaction less credits given for later liquidation plus interest at a rate of 8% from March 21, 1989 and reasonable attorney's fees. Claimants further request that the Counterclaim be denied.

Wall Street Clearing requests that the panel dismiss the claims asserted against Dennis Fitzgerald. Wall Street further requests that the panel award them \$58,657.93 on its Counterclaim and if the trades are found to be unauthorized, joint and several against Respondent, Michael Carber, plus interest from April 6, 1989. In the event the panel directs Wall Street to reinstate Claimants' positions, then Wall Street requests that Michael Carber be required to indemnify Wall Street for all costs incurred in connection herewith.

Respondent, Michael Carber, requests that the panel dismiss all claims asserted against him and award him costs, disbursements, counsel's fees incurred in defense of this matter and such other further and different relief as the panel may deem just and proper.

Respondent, Parsons Eng, requests that the claims be dismissed.

AWARD

On March 25, 1991, in New York, New York, during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 1, 1990, signed by Arthur Goetchius on behalf of Respondent, Wall

hearing to defend the allegations asserted against him.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

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. Respondent's, Dennis Fitzgerald, Motion to Dismiss is granted on consent and Wall Street Clearing Co. is substituted as Respondent;
2. Respondents, Michael Carber, Alexander Minella and Parsons Eng, are jointly and severally liable to the Claimants and shall pay them Fifty Five Thousand Dollars and Zero Cent (\$55,000.00);
3. Respondents, Carber, Minella and Eng, are also liable to the Claimants for interest at a rate of nine percent (9%) from March 21, 1989 to the date of the Award;
4. All claims asserted against Wall Street Clearing Co., are denied;
5. The Counterclaim and Cross Claim asserted by Wall Street Clearing are also denied;
6. The parties shall each bear their respective costs including attorneys' fees;

OTHER ISSUES

Respondents, Michael Carber, Alexander Minella and Parsons Eng, did not appear at the hearing. Based upon the evidence submitted as part of Arbitrator's Exhibit No. 2 regarding hearing notices to the parties and other correspondences, this panel finds that proper notice was given and pursuant to Section 29 of the Code of Arbitration Procedure, proceeded with the hearing in their absence.


FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

1. The NASD shall retain the \$750.00 which was deposited by the Claimants;
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3. Respondent, Wall Street Clearing Co., is assessed \$750.00 in forum fees for one hearing session;
4. Respondent, Wall Street Clearing Co., is assessed the \$200.00 non-refundable filing fee on Claimants' Claim;
5. The MSD shall retain the \$500.00 non-refundable filing fee deposited by Wall Street Clearing on the Counterclaim;
6. The MSD shall retain the \$500.00 non-refundable filing fee deposited by Wall Street Clearing on the Cross Claim;
7. Respondent, Wall Street Clearing Co., made a total deposit of \$2,200.00. The total amount assessed is \$1,950.00. Therefore, said Respondent is entitled to a refund of \$250.00.

Concurring Arbitrator Signature


Robert D. Owen, Esq.

Date of Decision _____

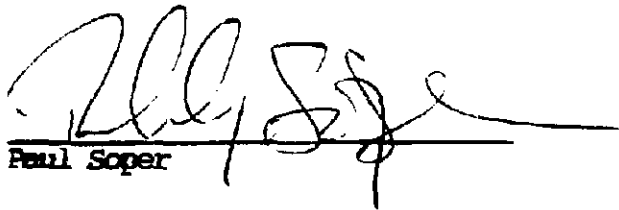
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Concurring Arbitrator Signature



Paul Soper

DATED BY NASD
MAY 15, 1991

Date of Decision _____

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Concurring Arbitrator Signature


Milton H. Lehrer

DATED BY MSD
MAY 15, 1991

Date of Decision

5/7/91