

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Syed A. Barkatullah

90-00780

Name of Respondents

J.F. Lowe & Company, Inc.  
Jim Lowe  
Kasi Hassan  
Hank Fichter  
Rich Greenstein  
John Mitkowski

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REPRESENTATION OF PARTIES

All parties appeared pro se.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 13, 1990, Claimant Syed A. Barkatullah alleged that Respondent John Mitkowski, while employed by or acting as an agent of Respondent J.F. Lowe and Company, Inc., failed to execute a sell order on shares of common stock in Claimant's account. Claimant stated that he called Respondent Mitkowski on November 28, 1989 to order the sale of 200 shares of SCNG and 3934 shares of Management Advisory Software and that the proceeds be used to buy 10 IFF January calls. Respondent Mitkowski called to confirm the trades the same day. Claimant was out of the country between December 7, 1989 and January 15, 1990 and returned to discover the options sold because of a failure to pay and the above stocks still in his account. Respondent James F. Lowe, Kasi Hassan, Hank Fichter, and Richard Greenstein were named as parties because of their relationship to Respondent J.F. Lowe and Company.

In a Statement of Answer filed with the NASD on June 27, 1990, Respondent James F. Lowe denied any responsibility for Claimant's losses, stating that while a report of the trades may have been given in error, the Claimant's delay in dealing with the matter created the majority of the loss and that, furthermore, the Claimant realized a profit of \$1,700.00 while violating Federal Regulation because even if the stocks in question sold, they would not have settled in time to pay for the option transaction.

In a Statement of Answer filed with the NASD on July 23, 1990, Respondent Henry Fichter denied responsibility for the losses alleged in the Statement of Claim, stating that although he was co-manager of the branch office, he did not have any contact with the Claimant.

In a Statement of Answer filed with the NASD on or about July 10, 1990, Respondent Rick Greenstein denied any liability to Claimant, stating 1) he never had any contact with the Claimant; 2) the verbal confirmation of the trades was a mistake by Respondent Mitkowski, or a clerical error by the back office of J.F. Lowe or Oтра clearing; and 3) Claimant has failed to state a claim against him.

In a Statement of Answer and Request for Clarification filed with the NASD June 22, 1990, Respondent Kasi Hassan denied knowing the Claimant and requested clarification of the Statement of Claim in order to know why and what claims were brought against him.

In a Response to the Clarification filed on July 30, 1990, Claimant represented that Respondent Hassan was named as a respondent because he was one of the several partners of the firm and was responsible, directly or indirectly, for Claimant's losses.

No Statement of Answer was filed by Respondents J.F. Lowe & Company, Inc. or John Mitkowski.

#### RELIEF REQUESTED

Claimant Syed A. Barkatullah requested entry of an award against Respondents in the amount of \$2,050.25.

Respondents James Lowe, Kasi Hassan, Hank Fichter and Rich Greenstein requested that the Statement of Claim be dismissed and denied in its entirety.

#### OTHER ISSUES

Respondent J. F. Lowe & Company, Inc. ceased doing business in November of 1989 as a result of net capital violations. Upon review of the record, the arbitrator determined that Respondent J.F. Lowe & Company had received due notice of the claim and hearing. Furthermore, upon review, the arbitrator determined that Respondent John Mitkowski had received due notice of the Statement of Claim and hearing.

Upon motion duly made, the arbitrator determined that Respondents James Lowe, Kasi Hassan, Hank Fichter, and Rich Greenstein could appear by telephone. Respondent James Lowe thereafter failed to appear by telephone. Pursuant to Section 29 of the Code of Arbitration Procedure, the arbitrator proceeded with the arbitration of the controversy despite Respondent Lowe's absence.

#### PROCEDURAL MATTERS

On February 14, 1991 in Denver, Colorado during a hearing lasting a

total of one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 27, 1990 by Claimant Syed A. Barkatullah on June 25, 1990 by Respondent James Lowe, on June 16, 1990 by Respondent Henry Fichter, and on July 9, 1990 by Respondent Richard Greenstein.

Respondent Kasi Hassan did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondents J.F. Lowe & Company, Inc. and John Mitkowski did not file with the NASD a properly executed submission to arbitration, but are required to submit pursuant to Section 12 of the NASD Code of Arbitration Procedure and are bound by the determination of the arbitrator on all issues submitted.

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 original(s) remain on file with the NASD.

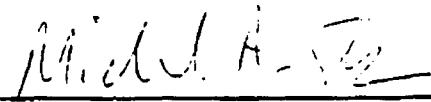
#### AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs, including attorney's fees, except for those specifically enumerated herein;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$ 25.00 previously deposited with the NASD by the Claimant Syed A. Barkatullah. In addition, Claimant Syed A. Barkatullah is liable for and shall pay to the NASD additional forum fees in the amount of \$25.00.

Dated:

5/23/91

  
Michael A. Sabian, Esq.  
Presiding Chair  
Public Arbitrator