



N.A.S.D. AWARD

Arbitration

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 Claimant(s)

James J. Gaita

90-01100

Name of Respondent(s)

Wall Street Clearing Co.
Wakefield Financial Corp.
Michael Carber
Alexander Minella
Parsons Eng

Heard before the Arbitration Panel:

Name	Public/Industry
Thomas W. Kelly, Esq.	Public/Chairman
Henry H. Balter	Public/Panelist
Louis Green	Industry/Panelist

REPRESENTATION

Claimant was represented by: John J. O'Neill, Esq.

Respondent, Wall Street Clearing Co., was represented by: Dave Goldman, Esq.
of Wexler & Burkhart, P.C.

Respondent, Michael Carber did not attend the hearing but requested via a letter from his attorney to the NASD dated January 30, 1991 that the panel rely on his written submissions-his Statement of Answer-dated July 2, 1990 and his Submission Agreement executed on the same date.

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Respondents, Wakefield Financial Corp., Alexander Minella and Parsons Eng did not appear at the hearing but based upon the evidence submitted in Arbitrators Exhibit No. 1 regarding hearing notices to the Parties, this arbitration panel finds that proper notice exists as well as jurisdiction pursuant to Section 12(a) of the Code of Arbitration Procedure over those respondents. Pursuant to Section 29 of the Code of Arbitration Procedure and based upon evidence in Arbitrators Exhibit No. 1, this arbitration panel proceeded with the hearing in their absence.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 17, 1990. Claimant, alleged that on March 6, 1989 an unauthorized purchase of 40,000 B Warrants of Home Disc Satellite were placed in his account at Wakefield Financial Corp. which, at the time cleared through Respondent, Wall Street Clearing Co. but that he never received a confirmation for same. Claimant alleged that Wall Street Clearing Co. subsequently wiped out that position deciding that it had no value causing a debit balance in Claimant's account. Claimant further alleged that he received a mailgram from Wall Street Clearing Co. dated March 20, 1989 indicating that he owed \$17,870.00 for the purchase of the warrants. Claimant contended that Respondents, Wakefield Financial Corp, Wall Street Clearing Co. and their officers and representatives, Michael Carber, Alexander Minella and Parsons Eng are all responsible for the resulting debit balance in his account and the monetary damages he sustained.

Wakefield Financial Corp. did not submit a Statement of Answer.

In a Statement of Answer filed with the NASD in May of 1990 Respondent, Wall Street Clearing Co. maintained that it was only a clearing agent for Wakefield Financial Corp. merely acted in the capacity of custodian for the transfer of securities and funds and keeper of their records and therefore not responsible for any losses sustained by Claimant. Wall Street Clearing Corp. further maintained that Claimant is responsible for the purchase on the basis of apparent authority since Claimant sat back and did nothing once he received the confirmation. Wall Street Clearing Corp. further asserted a Counter Claim against Claimant for a debit balance in his account resulting from the trade in question.

Respondent, Michael Carber, in his Statement of Answer dated July 2, 1990, denied all allegations of wrong doing and maintained that Claimant had failed to state a claim against him upon which relief could be granted since there is no allegation that he caused the unauthorized trade in question to occur nor is he responsible or liable for the acts of the other Respondents in this case.

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Respondent, Alexander Minella, did not submit a Statement of Answer.

Respondent, Parsons Eng, in his Statement of Answer which was received by the NASD on September 7, 1990, denied having directly or indirectly instructed or approved of the purchase of securities for the account of the Claimant by any agent of Wakefield Financial Corp. without Claimant's authorization. Parsons Eng maintained in his Statement of Answer that the damages sustained by Claimant, if any, were the proximate result of market conditions and/or other factors beyond his control and that Claimant is therefore barred from seeking recovery of any damages from him.

RELIEF REQUESTED

Claimant requested the following:

1. That Respondents be ordered by the panel to reverse the trade made in his account which resulted in the debit balance.
2. That Respondents be made to reinstate the full amount of shares of securities in his account.
3. That Respondents be ordered by the panel to unfreeze and release his account.
4. That Respondents be ordered by the panel to notify any and all creditors in writing by registered/certified mail and any other organization that his account is in good standing and has always been, with copies of said letters to Claimant.

Claimant also requested punitive and treble damages.

Respondent, Wall Street Clearing Co. requested that Claimant's requests for declaratory relief be denied and an award be rendered in its favor on its Counterclaim in the amount of \$18,870.00 plus interest reflecting the losses it incurred as a result of Claimant's failure to meet his payment obligation.

Respondent, Michael Carber, requested dismissal of the Claim against him in all respects plus costs, disbursements and attorneys' fees.

Respondent, Parsons Eng requested dismissal of the Claim.

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AWARD

On May 7, 1991 in New York City, NY during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, James J. Gaita on April 13, 1990, signed by Dennis Fitzgerald on behalf of Respondent, Wall Street Clearing Co. on May 8th, 1990, by Respondent, Michael Carber, on July 2, 1990 and by Respondent Parsons Eng on August 28, 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:

(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.)

1. Respondents, Wakefield Financial Corp., Michael Carber and Alexander Minella are jointly and severally liable and shall pay to claimant the sum of Fifteen Thousand One Hundred Twenty Five Dollars and no cents (\$15,125.00) plus interest at the rate of 9% per annum from March 6, 1989 to the date of payment of this award;
2. Respondent, Wall Street Clearing Co. shall restore to Claimant's account 2000 shares of Component-Guard, Inc. and 1500 shares of Topologix, Inc. and release said account to Claimant;
3. The Counterclaim of Respondent, Wall Street Clearing Co. against James J. Gaita shall be and hereby is denied;
4. Claimant's Claim against Parsons Eng shall be and hereby is denied;
5. Claimant's Claims for Punitive Damages and Treble Damages are hereby denied;
6. The Parties shall each bear their respective costs, including attorneys' fees;
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Claimant is assessed \$450.00. This represents the balance owed on the \$850.00 assessable in this matter pursuant to Section 43(e) of the Code of Arbitration Procedure- (\$250.00 non-refundable deposit and \$600.00 hearing session deposit for one of the two sessions held on May 7, 1991-Claimant initially paid \$400.00 of this combined amount which the NASD, Inc. has retained).

Respondent, Wall Street Clearing Co. shall pay forum fees in the amount of \$1,100.00 pursuant to section 43(a) of the Code of Arbitration Procedure. (This amount represents \$500.00 non refundable deposit for the Counterclaim asserted in this matter and \$600.00 for the second hearing session on May 7, 1991).

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

Concurring Arbitrators Signatures

/s/

Thomas W. Kelly, Esq.

/s/

Henry H. Balter

/s/

Louis Green, CPA

Dated by the NASD:

DATED BY NASD
JUNE 26, 1991