

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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IN THE MATTER OF THE ARBITRATION BETWEEN

ROBERT and CAROLE PETRUCELLI JT/WROS

**CLAIMANT**

**AWARD**

90-01330

MICHAEL LAKE  
FINANCIAL CLEARING & SERVICES CORP.

**RESPONDENTS**

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 10, 1990 Claimants Robert and Carole Petrucelli JR/WROS alleged an unauthorized trade was executed in their account creating a debit condition and that the subsequent liquidation of their accounts by Financial Clearing & Services Corp. was improper. Respondent Financial Clearing & Services Corp. maintained they are the clearing broker and were not responsible for executing the trade in the account and further maintained they cleared the purchase of the stock based on instructions from Claimant's agent. Respondent Financial Clearing & Services Corp. asserted a counterclaim against the Claimants alleging the Claimants are directly accountable and liable to it and should pay for the trade that was executed for their account and risk. Respondent Michael Lake maintained that based on the Claimants stated investment objectives, financial qualifications, prior experience in various securities transactions and personal data, the Respondent, in accordance with existing policies and procedures determined that the Claimants were suitable for each of the transactions that were effectuated in their account. Respondent Michael Lake further maintained that the transactions were effectuated with Claimants full knowledge, consent and permission following a fair and balanced presentation of both the investment merits and risks based on all available public information.

RELIEF REQUESTED

Claimant requested a rescission of the trade and a dismissal of the counterclaim and damages in the amount of \$37,000.00 or in the alternative restoration of his portfolio prior to

liquidation. Respondent Financial Clearing requested a dismissal of the claim against it, a ruling that relief, if any, is recoverable against the registered representative, compensatory damages of \$14,659.53 plus interest as well as the costs and disbursements of this action, plus other and further relief as the panel may deem just and proper. Respondent Michael Lake requested dismissal of claim against him and that all costs be borne by the Claimants.

#### AWARD

On November 6, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Robert and Carole Petrucelli JT/WROS ("Petrucelli") on May 9, 1990 by Respondent Michael Lake ("Lake") on July 31, 1990 and by Respondent Financial Clearing & Services Corp. ("Financial Clearing") on July 31, 1990. The hearing was conducted at the offices of the NASD, Inc. located in New York City, NY and consisted of two hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Financial Clearing & Services Corp. be and hereby is liable and shall pay to the Claimants Robert and Carole Petrucelli the sum of Five Thousand Nine Hundred Fifty Eight Dollars and No Cents (\$5,958.00), interest specifically excluded.
2. The counterclaim by Respondent Financial Clearing & Services Corp. be and hereby is dismissed in all respects.
3. All claims against Respondent Michael Lake be and hereby are dismissed in all respects.
4. The parties shall each bear their respective costs including attorneys' fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant. In addition, the Respondent Financial Clearing & Services Corp. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$400.00 to represent forum fees.

ARBITRATORS CONCURRING

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ROBERT SEAMAN, ESQ.

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SYLVIA LUCAS

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LEWIS SILVER, ESQ.