

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

- Dmytro Motruk :

Claimant :

vs. :

Financial Clearing and Services Corp. :

Joseph Hopkins, III :

Respondents:

CASE #90-02340
AWARD

CASE SUMMARY

Pro Se Claimant, Dmytro Motruk, in a claim filed with the National Association of Securities Dealers, Inc. on August 23, 1990, alleged that Respondent Financial Clearing and Services Corp. holding him liable for the unauthorized purchase in his account of two thousand (2,000) shares of Healthcare Tech. Ltd. executed by his broker of record at J.T. Moran & Co., Joseph Hopkins.

Respondent, Financial Clearing & Services Corporation, by its attorney Michael G. Schwartz, Wexler & Burkhart, P.C., Garden City, NY, maintained that a clearing broker cannot be held responsible for the acts or omissions of the introducing firm, its employees and/or its registered personnel. Financial Clearing & Services Corp. asserts a Counterclaim against the Claimant for the debit balance in his account and a Cross-claim against Respondent Joseph Hopkins for liability for all sums lost as a result of trading activities in Claimant's account.

Respondent Joseph Hopkins, III failed to answer the Statement of Claim originally served on him October 26, 1990. The Statement of Claim and the Cross-claim asserted by Respondent Financial Clearing and Services Corp. was served on Mr. Hopkins on March 20, 1991 at 104 Parkwood Drive, Shirley, NY 11967. Following three attempts at service, it was returned "unclaimed". The Claim and Cross-claim were sent by regular mail on April 15, 1991 and not returned.

On May 14, 1991, Mr. Hopkins was served with the notice of the arbitrator selected to determine the case. A signed certified mail green card was returned, dated May 17, 1991. Joseph Hopkins, III failed to answer the Statement of Claim and the Cross-claim.

Claimant replied to Financial Clearing and Services Corporation's Counterclaim that he feels they did not have a right to sell his stocks after he had informed them that there were discrepancies and an unauthorized purchase of Healthcare stock.

RELIEF REQUEST

Claimant requests Three Thousand Eight Hundred Seventy-Eight Dollars and No Cents (\$3,878.00) in damages.

Respondent Financial Clearing and Services Corporation requests dismissal of the Claim against it and asserts an indemnification Cross-claim against Joseph Hopkins III and asserts a Counterclaim against the Claimant for the debit balance of Three Thousand Four Hundred Fifty-Four Dollars and No Cents (\$3,454.00).

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George R. Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 11, 1990 and by the Respondent Financial Clearing and Services Corporation on December 10, 1990 but not by Respondent Joseph Hopkins, III as required by Section 13(d) of the Code of Arbitration Procedure.

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:


1. Respondent Joseph Hopkins, III is liable and shall pay to the Claimant Dmytro Motruk the sum of Three Thousand Four Hundred Fifty Dollars and No Cents (\$3,450.00).
2. That the Claim against Financial Clearing and Services Corporation be, and hereby is, dismissed.
3. That the Counterclaim of Financial Clearing and Services Corporation against Dmytro Motruk be, and hereby is, dismissed.
4. That Financial Clearing and Services Corporation's Cross-claim against Respondent, Joseph Hopkins, III, is granted and that Joseph Hopkins, III is liable for the debit balance in

Claimant's account, totalling Three Thousand Four Hundred Fifty Dollars and No Cents (\$3,450.00) as determined in item "1." of this award.

5. The One Hundred Twenty-Five Dollars and No Cents (\$125.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and is assessed against the Respondent, Joseph Hopkins, III, who shall pay One Hundred Twenty-Five Dollars and No Cents (\$125.00) to the Claimant Dmytro Motruk.

AFFIRMATION

I, GEORGE R. FREUND, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATED: 8/19/91