

Jaw

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Sam Rothman

90-02512

Name of Respondents

Rosenkrantz, Lyon & Ross, Inc.

Dan Purjes

Dan Simms

Wertheim Schroeder & Co., Inc.

REPRESENTATION

For Claimant: Sam Rothman appeared pro se.

For Respondents: Wertheim Schroeder & Co., Inc. was represented by Patricia M. Kelly, Esq. of the law firm of Fulbright & Jaworski.

Rosenkrantz, Lyon & Ross, Inc. and Dan Purjes were represented by Donald Hanson, Esq.

Dan Simms did not appear.

CASE INFORMATION

Statement of Claim filed on: September 10, 1990.

Claimant's Submission Agreement signed on: August 30, 1990.

Joint Statement of Answer filed by Respondents Rosenkrantz Lyon & Ross, Inc. and Dan Purjes on: March 14, 1991.

Respondent Rosenkrantz, Lyon & Ross, Inc.'s Submission Agreement signed on: March 13, 1991.

Respondent Dan Purjes's Submission Agreement signed on: March 13, 1991.

Statement of Answer filed by Respondent Wertheim Schroeder & Co., Inc. on: March 14, 1991.

FILED

Respondent Wertheim Schroeder & Co., Inc.'s Submission Agreement signed on: March 12, 1991.

The Respondent Dan Simms did not sign a Submission Agreement or submit a Statement of Answer as required pursuant to Section 1 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: January 28, 1992, 1 Session.

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that Respondents Dan Simms, Rosenkrantz, Lyon & Ross, Inc. and Dan Purjes executed an unauthorized purchase of stock in his account and failed to follow his written instructions to cancel the trade. Claimant further alleged Respondent Wertheim Schroeder & Co., Inc. failed to send him a prospectus.

Respondents Rosenkrantz, Lyon & Ross, Inc. and Dan Purjes maintained the Claimant did authorize the purchase of stock referred to in his Statement of Claim, he did receive a prospectus and his claim is an attempt to circumvent taking a loss in his account. Respondents Rosenkrantz, Lyon & Ross, Inc. and Dan Purjes further maintained if the arbitration panel determines the trade was unauthorized the Respondent Dan Simms should be liable because he violated written firm policy, thereby exceeding the scope of his employment. Respondents Rosenkrantz, Lyon & Ross, Inc. and Dan Purjes further maintained the Claimant is not entitled to receive punitive damages or attorneys' fees and Claimant's damages were caused by Claimant as they acted in good faith and at all times fully performed all of their respective duties to Claimant.

Respondent Wertheim Schroeder & Co., Inc. maintained the claim does not allege any wrongdoing on the part of Wertheim Schroeder & Co., Inc. in any way and they performed certain clearing functions on a fully disclosed basis for Rosenkrantz, Lyon & Ross, Inc. and was not privy to any of the communications alleged in Claimant's claim. Respondent Wertheim Schroeder & Co., Inc. further maintained a prospectus was sent to the Claimant.

RELIEF REQUESTED

Claimant requested damages of \$20,835.00, plus interest, expenses of bringing the action, damages due to loss of his time and punitive damages.

Respondents Rosenkrantz, Lyon & Ross, Inc. and Dan Purjes requested dismissal of claim together with attorneys' fees and costs and such other and further relief as to the arbitration panel may deem just and proper.

Respondent Wertheim Schroeder & Co., Inc. requested dismissal of claim, plus costs, reasonable attorneys' fees and expenses of counsel.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. In accordance with Section 1 of the Code of Arbitration Procedure the arbitration panel determined there existed jurisdiction over the Respondent Dan Simms.
2. In accordance with Section 25 of the Code of Arbitration Procedure, the Respondent Dan Simms was served with the Statement of Claim and given an opportunity to respond which he failed to do.
3. In accordance with Sections 21 and 26 of the Code of Arbitration Procedure, the Respondent Dan Simms was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing.
4. In accordance with Section 29 of the Code of Arbitration Procedure, the arbitration panel determined in light of the foregoing information to proceed with the Respondent Dan Simms as a party.
5. All claims against Respondent Wertheim Schroeder & Co., Inc. are dismissed in their entirety;
6. All claims against Respondent Dan Simms are dismissed in their entirety;
7. All claims against Respondent Dan Purjes are dismissed in their entirety;

8. The Respondent Rosenkrantz, Lyon & Ross, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$4,500.00, interest specifically excluded;
9. The Claimant's request for punitive damages is denied;
10. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

The NASD shall retain the \$520.00 filing fee previously deposited by the Claimant.

CONCURRING ARBITRATORS' SIGNATURE


Martin D. Elle, Esq.

Public Arbitrator

Eugene J. McCabe

Public Arbitrator


Paul M. Rosenthal

Industry Arbitrator

Date of Decision: FEB 27 1992

STATE OF
COUNTY OF

New York
New York

S.S.:

On this *14* day of *February*, 1992, before me personally appeared MARTIN D. EILE known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he/she executed the same

Paul W. Lawrence

NOTARY PUBLIC
STATE OF NEW YORK
Commission Expires December 31, 1992

STATE OF *NEW YORK*
COUNTY OF *NEW YORK*

S.S.:

On this *24th* day of *February*, 1992, before me personally appeared EUGENE J. MCCABE known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he/she executed the same

Eugene J. McCabe

ASTOR L. VAN SLYKE
Notary Public, State of New York
No. 43-496730
Qualified in Kings County
Commission Expires March 15, 1992

STATE OF *NEW YORK*
COUNTY OF *NEW YORK*

S.S.:

On this *18th* day of *FEBRUARY*, 1992, before me personally appeared PAUL M. ROSENTHAL known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he/she executed the same

ELAINE BENINATI
Notary Public, State of New York
No. 43-4888002
Qualified in Richmond County
Commission Expires March 23, 1993

Elaine Beninati