

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant(s)

Ilse Curto

90-03053

Name of Respondent(s)

Otra Clearing, Inc.
Financial Clearing & Services Corp.
Christopher Roberts
Robert Hasho

Heard before:

Richard W. Vallario, Esq.
Paul M. Rosenthal
Ira S. Newman, Esq.

Public Arbitrator
Industry Arbitrator
Public Arbitrator

REPRESENTATION

Claimant, Ilse Curto, ("Claimant"), was represented by William Alesi, Esq. of the law firm of Shaw, Licitra, Esernio, & Schwartz, P.C. Respondent, Otra Clearing, Inc., ("Otra"), was represented by Scott Monson, Esq. Respondent, Robert Hasho, ("Hasho"), appeared pro se. Respondent, Financial Clearing & Services Corp., ("FICS"), was represented by David Goldman, Esq. of the law firm of Wexler & Burkhardt, P.C. Respondent, Christopher Roberts, ("Roberts"), appeared pro se.

CASE SUMMARY

On October 29, 1990, Claimant filed a Statement of Claim with the National Association of Securities Dealers, Inc. ("NASD"), in which she claimed that the Respondents were grossly negligent and misappropriated and converted her securities without her authorization and attempted to cover up this scheme to defraud. Specifically, Claimant alleged that Respondent, Roberts, a broker at J.T. Moran & Co., in January or February, 1990, purchased an additional 1000 shares of Health Care Technologies ("Healthcare") without her authorization and sold such stock along with the Claimant's other 1000 Healthcare shares, without receiving the Claimant's authorization or delivering the proceeds to the Claimant, and which created a negative debit balance in her account. Claimant further alleged that Respondent, Hasho, Roberts manager, neglected to reverse the unauthorized sale and purchase. Thereafter, Claimant learned that certain of the accounts of J.T. Moran & Co.

were transferred from its clearing house, FICS, to Vanderbilt Securities serviced by Otra as clearing house. At that time her account consisted of 1000 shares of EMS Limited and 150 Federal National Mortgage warrants. Claimant then received a statement from Vanderbilt Securities for the period ending April 27, 1990, indicating a closing balance of zero. Claimant then contacted Vanderbilt Securities which advised that it had no record of Claimant's account. Claimant further alleged she made inquiry of Otra which advised Claimant that the account was returned to FICS allegedly because of a negative balance and FICS denied that the securities were returned by Otra. Claimant has not received any further information from Otra or FICS as to the location or disposition of her securities.

Respondent, Otra, filed a Statement of Answer with the NASD on February 20, 1991, and maintained that the Claimant has failed to allege any activity or involvement regarding Otra with respect to Claimant's allegations. Respondent, Otra, further maintained it rejected the transfer of Claimant's account on the basis that the account contained a debit balance. Respondent, Otra, further maintained Claimant has totally mischaracterized the information contained on the account statements sent by Vanderbilt Securities. It further maintained that it owed no duty to Claimant to act other than it did pursuant to the terms of its clearing agreement with Vanderbilt Securities, and pursuant to its agreement with FICS that Otra would not accept any accounts with a negative balance.

Respondent, Hasho, filed a Statement of Answer with the NASD on January 31, 1991, in which he maintained that he was not the branch office manager at J.T. Moran & Co. nor was he responsible for reversing erroneous transactions. He further maintained that the Statement of Claim does not state a cause of action against him upon which relief should be granted and he owed no duty to the Claimant and was not in privity of contract with the Claimant.

Respondent, FICS, filed a Statement of Answer with the NASD in which it maintained that it acted according to the industry's normal custom and practice, and in a manner consistent with just and equitable principles of trade in processing trades submitted to it by an introducing firm and properly relied on the actual and/or apparent authority of the introducing firm to act as agent for the Claimant. Respondent, FICS, further maintained that it is a clearing broker and, therefore, cannot as a matter of law or practice be liable as a principal or guarantor of the acts or representations of J.T. Moran & Co. or its employees and/or representatives. Respondent, FICS, further maintained that it has demonstrated that the remaining securities which Claimant seeks return of were properly transferred to Otra and are no longer owed to the Claimant by FICS.

Respondent, Roberts, settled his dispute with the Claimant prior to the commencement of the first hearing session.

RELIEF REQUESTED

Claimant requested compensatory damages of \$9,718.74, plus punitive damages in the sum of \$29,156.22 together with reasonable attorneys' fees and costs of the proceeding.

Respondent, Otra, requested that Claimant's Statement of Claim be dismissed in its entirety and that it be awarded its costs and attorneys' fees incurred.

Respondent, FICS, requested that Claimant's Statement of Claim be dismissed in its entirety and that it be awarded its costs and attorneys' fees incurred.

Respondent, Hasho, requested that the Statement of Claim be dismissed in its entirety.

AWARD

On June 24 and 25, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 23, 1990 and signed by Respondent, Otra, on February 20, 1991, by Respondent, Hasho, on January 28, 1991, by Respondent, Roberts, on June 24, 1991 and by Respondent, FICS, on March 6, 1991. The hearing was conducted at the offices of the NASD located in New York City, NY and consisted of three (3) hearing sessions. 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:

1. Prior to the commencement of the first hearing session the arbitration panel was informed that the Claimant had reached a settlement agreement with the Respondent, Roberts.
2. The Respondent, FICS, be and hereby is liable and shall pay to the Claimant the sum of Two Hundred Fifty Dollars and No Cents (\$250.00).
3. The Respondents, FICS and Otra, be and hereby are liable jointly and severally and shall pay to the Claimant the sum of Four Thousand Six Hundred Fifty Five Dollars and Seventy Five Cents (\$4,655.75).
4. All Claims against Respondent, Hasho, be and hereby are dismissed in all respects.

5. The Respondents, FICS and Otra, be and hereby are liable jointly and severally and shall pay to the Claimant the sum of Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00), to represent attorneys' fees and reasonable disbursements pursuant to the authority set forth in Claimant's Memorandum of Law.
6. The Claimant's request for punitive damages be and hereby is dismissed.

FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD shall retain the \$520.00 filing fee previously deposited by the Claimant and the Respondents, Otra and FICS, be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$520.00 to reimburse her for the filing fee paid. In addition, the Respondents, Otra and FICS, be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$800.00 to represent forum fees.

CONCURRING ARBITRATORS

/s/

Richard W. Vallario, Esq.

/s/

Paul M. Rosenthal

/s/

Ira S. Newman, Esq.

Date of Decision: September 9 , 1991

5. The Respondents, FICS and Otra, be and hereby are liable jointly and severally and shall pay to the Claimant the sum of Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00), to represent attorneys' fees and reasonable disbursements pursuant to the authority set forth in Claimant's Memorandum of Law.
6. The Claimant's request for punitive damages be and hereby is dismissed.

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CONCERNING ARBITRATORS



Richard W. Vallario, Esq.

Paul M. Rosenthal

Ira S. Newman, Esq.

Date of Decision:

, 1991

STATE OF

New Jersey

S.S:

COUNTY OF

Essex

On this *11th* day of *September*, 1991, before me personally appeared RICHARD W. VALLARIO known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he/she executed the same

Agnes L. Young

AGNES L. YOUNG
A Notary Public of New Jersey
My Commission Expires December 1, 1993

5. The Respondents, FICS and Otra, be and hereby are liable jointly and severally and shall pay to the Claimant the sum of Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00), to represent attorneys' fees and reasonable disbursements pursuant to the authority set forth in Claimant's Memorandum of Law.
6. The Claimant's request for punitive damages be and hereby is dismissed.

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CONCURRING ARBITRATORS

Richard W. Vallario, Esq.

Paul M. Rosenthal

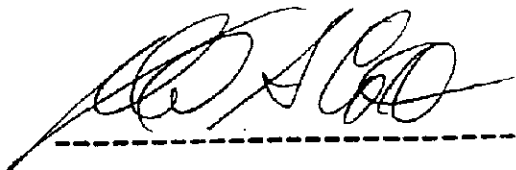

Ira S. Newman, Esq.

Date of Decision: September 4, 1991

STATE OF
COUNTY OF

S.S:

On this 4 day of Sept, 1991, before me personally appeared IRA S. NEWMAN 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



DAVID G. COTTON
Notary Public, State of New York
No. 30-0777425
Qualified in Nassau County
Commission Expires April 30, 1991
1993

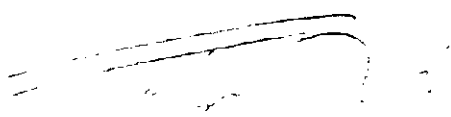
5. The Respondents, FICS and Otra, be and hereby are liable jointly and severally and shall pay to the Claimant the sum of Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00), to represent attorneys' fees and reasonable disbursements pursuant to the authority set forth in Claimant's Memorandum of Law.
6. The Claimant's request for punitive damages be and hereby is dismissed.

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CONCURRENCE ARBITRATORS

Richard W. Vallario, Esq.



Paul M. Rosenthal

Ira S. Newman, Esq.

Date of Decision:

, 1991

STATE OF NEW YORK

S.S:

COUNTY OF NEW YORK

On this 3 day of September, 1991, 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 he duly acknowledged to me that he/she executed the same.

Elaine Beninati

ELAINE BENINATI
Notary Public, State of New York
No. 43-4888002
Qualified in Richmond County
Commission Expires March 23, 1992