

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank Amato

90-03445

Name of Respondents

Otra Clearing, Inc.
J.F. Lowe & Company

REPRESENTATION

For Claimant: Don Plaus was designated by the Claimant at the hearing as his representative.

For Respondent Otra Clearing, Inc. ("Otra"): Scott Monson, Esq., in house counsel.

For Respondent J. F. Lowe & Co. ("Lowe"): no attorney of record.

CASE INFORMATION

Claimant filed a Submission Agreement on September 8, 1990 and a Statement of Claim on February 25, 1991.

Respondent Otra filed a submission agreement on April 22, 1991 and a Statement of Answer on April 22, 1991.

Respondent Lowe did not file a submission agreement nor a Statement of Answer.

HEARING INFORMATION

Hearing Date/Sessions: July 24, 1991: one session.

Hearing Location: New York, New York.

Respondent Lowe did not appear at the hearing.

Respondent Otra did not appear at the hearing but filed a brief in lieu thereof, which was accepted as an Arbitrator's Exhibit with the consent of the Claimant.

CASE SUMMARY

Claimant alleged that he placed two sell trades with Respondent Lowe on October 26, 1989 for 7000 shares of Information Resource Engineering and 1000 units of US Comtrac. He received confirmation of these trades showing a trade date of November 16, 1989 and a settlement date of November 24, 1989. He further alleged that J. F. Lowe ceased doing business on November 28, 1989 and that these trades were later cancelled by Otra on December 6, 1989. Claimant further alleges that these securities are worthless today, but did have value on the day J.F. Lowe ceased doing business.

Respondent Otra alleged that it is a clearing broker for Lowe. It alleged that Lowe instructed it on November 16, 1989 to sell the two securities in question, which it did. However, on December 6, 1989 (nearly two weeks after the settlement date), Otra alleged that Lowe instructed Otra to cancel both sell transactions because the buyer on the other side had not paid for the securities. Otra alleged that it owed no duty to Claimant other than to act in full conformance with the conditions of the clearing agreement with Lowe, which it did.

RELIEF REQUESTED

Claimant requested that he be awarded the sales price of the two trades: \$4,375.00 for Information Resource Engineering and \$3,985.00 for U.S. Comtrac for a total award of \$8,360.00.

Respondent Otra requested dismissal of the claim and costs.

AWARD

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

1. In accordance with section 25 of the Code of Arbitration Procedure, Lowe was served with the Statement of Claim by certified mail and given an opportunity to respond which it failed to do.
2. In accordance with Section 21 and 26 of the Code of Arbitration Procedure, Lowe was given due notice of the hearing procedure by regular and certified mail.
3. That the complaint against Respondent Lowe is dismissed without prejudice as the National Association of Securities Dealers, Inc. was unable to effect proper service on this Respondent because it's out of business.
4. That Respondent Otra is directed to pay Claimant the sum of \$4,180.00 with interest at the rate of 9% from the date of the award to the date of payment in full settlement of all claims brought by Claimant against it.

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CONCLUSION

Pursuant to Section 43c of the Code of Arbitration Procedure the NASD will retain the \$200.00 hearing session deposit as well as the \$75.00 claim filing fee.

Concurring Arbitrator's Signature:



Constantine N. Katsoris
Public Arbitrator

Date of Decision: _____