

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
:
The Pershing Division of Donaldson, :
Lufkin & Jenrette Securities Corporation :
:
Claimant :
:
vs. :
:
Lincoln Herzeca, Jr. :
Judy Herzeca :
:
Respondents :

CASE #90-03649
ANARD

CASE SUMMARY

Claimant by its attorney David A. Goldman, Wexler & Burkhart, P.C., Garden City, NY, in a claim filed with the National Association of Securities Dealers, Inc. on December 29, 1990, alleged that Respondents Lincoln Herzeca, Jr. and Judy Herzeca have failed and refused to pay a debit in their customer account; said debit remains due and outstanding.

Respondents, Lincoln and Judy Herzeca, Jr., Pro Se, maintained that they made all authorized purchases with Claimant by telephone and not via computer terminal and that although they did initially order four thousand shares of Amerifirst by telephone, they also cancelled the order by telephone. Respondents also state that Claimant acted in bad faith by liquidating their account which contained two thousand-five hundred shares of Viragen common stock.

Respondents issued a Counterclaim for the value of the Viragen stock which they allege was wrongfully liquidated from their account.

RELIEF REQUEST

Claimant requests One Thousand Seven Hundred Seventy-One Dollars and Nineteen Cents (\$1,771.19) in damages, plus nine percent (9%) per annum interest, Two Thousand Dollars and No Cents (\$2,000.00) in attorney's fees and the return of the Five Hundred Seventy-Five Dollars and No Cents (\$575.00) NASD arbitration fee.

Respondents request damages of One Thousand Ninety-Six Dollars and Eighty-Eight Cents (\$1,096.88).

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Nancy C. Wear, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 21, 1990 and by the Respondents on April 24, 1991.

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. That the Respondents, Lincoln Herzeca, Jr. and Judy Herzeca, are jointly and severally liable and shall pay to the Claimant, The Pershing Division of Donaldson, Lufkin and Jenrette Securities Corporation the sum of One Thousand Seven Hundred Seventy-One Dollars and Nineteen Cents (\$1,771.19).
2. That the Respondents are liable and shall pay to the Claimant interest on One Thousand Seven Hundred Seventy-One Dollars and Nineteen Cents (\$1,771.19) at the rate of nine percent (9%) per annum from September 28, 1990 until payment of the One Thousand Seven Hundred Seventy-One Dollars and Nineteen Cents (\$1,771.19).
3. That the Respondents are liable and shall pay to the Claimant One Thousand Dollars and No Cents (\$1,000.00) representing attorney's fees.
4. That the Respondent's Counterclaim be, and hereby is, dismissed in its entirety.
5. The Five Hundred Seventy-Five Dollars and No Cents (\$575.00) 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 Respondents, Lincoln Herzeca, Jr. and Judy Herzeca, who shall pay Five Hundred Seventy-Five Dollars and No Cents (\$575.00) to Claimant, The Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation.
6. The Fifty and No Cents Counterclaim fee previously deposited with the NASD, Inc. by the Respondents shall be refunded to the Respondents by the NASD.

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AFFIRMATION

I, NANCY C. WEAR, ESQ., 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: 8/20/91