

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donald I. Burdick, DPM

91-00156

Name of Respondent

First of America Brokerage Service, Inc.

REPRESENTATION

Claimant Donald I. Burdick appeared pro se.

Respondent First of America Brokerage Service, Inc. was represented by Mark A. Davis, Esq. of Howard & Howard Attorneys, P.C. of Kalamazoo, Michigan.

CASE INFORMATION

The Statement of Claim was filed on January 11, 1991.

Claimant's Submission Agreement was signed on January 4, 1991 by Donald I. Burdick.

The Statement of Answer was filed by Respondent, First of America Brokerage Service, Inc. on April 1, 1991.

Respondent, First America Brokerage Service, Inc.'s Submission Agreement was signed on March 29, 1991 by Teresa A. Oxford, Assistant Vice President and Compliance Director.

HEARING INFORMATION

Hearing Date/Session: February 13, 1991 for one (1) session

Hearing location: Chicago, Illinois

CASE SUMMARY

Claimant Donald I. Burdick ("Burdick") alleged that Respondent First of America Brokerage Service, Inc. ("First of America") caused him financial hardship in that First of America's accounting and electronic transfer

systems were out of control. Burdick alleged that actual account balances and inquiries of balance were never correct. Burdick alleged that First of America failed to give him the proper balance remaining in his account which led him to believe that funds existed which, in fact, did not. Burdick alleged that First of America allowed options to be traded in his account without funds available. Burdick also alleged that First of America incorrectly placed funds in his account which were not his. Burdick alleged that he traded options upon the belief that the funds belonged to him.

First of America alleged that Burdick was a successful doctor of podiatric medicine who represented himself as having extensive investment knowledge of the option and equity markets with 15 years of investing experience to his credit. First of America alleged that Burdick elected to have his bank account debited for the cost of transactions in his brokerage account at First of America. First of America alleged that Burdick opened his brokerage account on June 14, 1990 and that Burdick's trading privileges had been suspended by October 10, 1990 because Burdick failed to pay for securities purchases made upon Burdick's request. First of America alleged that Burdick made 71 unsolicited purchases and sales of option contracts in his brokerage account during the period of June 15, 1990 until October 10, 1990. These transactions amounted to 33 put or call options with subsequent liquidation and one outright stock purchase and sale. First of America alleged that each trade in Burdick's account settled the next day except one which was the purchase and sale of American Claims Evaluation, Inc. (AMCE) stock which settled on a 5 business day basis. First of America alleged that Burdick failed to indicate that he wished the AMCE stock purchase to be made in his margin account instead of his cash account. When First of America attempted to collect the amount owed for the AMCE stock, Burdick's bank account indicated there were insufficient funds.

First of America alleged that after the insufficient funds notice, it learned that Burdick wished to make this trade in his margin account. The trade was cancelled from his cash account and reexecuted in his margin account. First of America admitted there was an error in reversing the insufficient funds item but that this harmless administrative error was corrected shortly thereafter. First of America alleged that it executed all trades in accordance with Burdick's requests and in fulfillment of its contractual obligations. First of America counterclaimed for a debit balance in Burdick's account representing trades he requested and for which he failed to pay.

Burdick did not reply to the counterclaim.

RELIEF REQUESTED

Burdick requested compensatory damages of \$7,500 and punitive damages of \$500. First of America requested dismissal of the claim and an award on its counterclaim of \$7,329.19, plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing in this matter, the presiding arbitrator considered a requested amendment to the claim filed by Burdick and an objection filed by First of America. The presiding arbitrator granted the amendment pursuant to his authority set forth in Section 39(b) of the NASD Code of Arbitration.

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:

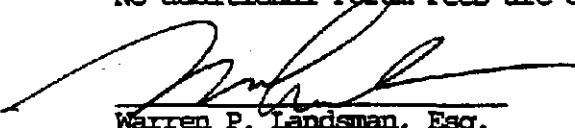
1. The claim as amended, asserted by Burdick against First of America shall be and is hereby denied and dismissed in its entirety;
2. Burdick is liable for and shall pay to First of America, on its counterclaim, the sum of Seven Thousand Three Hundred Twenty-Nine Dollars and Nineteen Cents, (\$7,329.19); and,
3. First of America's claim for attorney's fees is denied and the parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$75.00 claim filing fee and \$200.00 hearing session deposit of claimant.

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the \$500.00 claim filing fee and \$300.00 hearing session deposit made by First of America is also retained by the NASD.

No additional Forum Fees are assessed.


Warren P. Landsman, Esq.
Presiding Chair
Public Arbitrator


Dated

Date Award Served by NASD: _____