

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Donald & Ilene B. Raphael :

Claimants :

vs. :

Richard McGuire :

Respondent :

PUBLIC

CASE #91-00323
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 30, 1991, Claimants, Donald & Ilene B. Raphael, who appeared Pro Se, alleged that on January 31, 1989, Respondent, Richard McGuire, a registered representative at Investors Center, Inc. failed to follow their explicit instructions to sell all of their 400,000 shares of Affiliated National, Inc. at \$.10 per share or for as low as eight cents per share if necessary to clear that volume of shares from their account. Claimants further alleged that Respondent, Richard McGuire refused to follow these specific instructions unless Claimants purchased an equal dollar amount of a second security. Claimants contended that despite their repeated specific instructions to sell all 400,000 shares of Affiliated National, Inc., Respondent informed them that he sold 25,000 shares per day on January 31, 1989, February 1, 1989 and February 2, 1989. Claimants further contended that after repeated phone calls to Respondent, he confirmed to Claimants that on February 16, 1989 he sold an additional 275,000 shares of Affiliated National, Inc. at \$.08 per share. Claimants asserted that their confirmation indicated that the sale took place on February 28, 1989 and that Respondent only sold 75,000 shares at \$.0625, which trade was eventually cancelled. Claimants further asserted that in a letter dated March 20, 1989 Respondent advised them that as of February 27, 1989 when Investors Center, Inc. closed for business they held a position in Affiliated National, Inc. of 275,000 shares. Claimants argued that due to Respondent Richard McGuire's failure to perform his fiduciary obligations and failure to follow their explicit instructions to sell all their shares, they suffered substantial economic losses when the remainder of these shares were sold.

Respondent, Richard McGuire, who appeared Pro Se, maintained that Claimants, Donald & Ilene R. Raphael held 400,000 shares of Affiliated National, Inc. which was purchased for \$.05 per share, to which Respondent repeatedly recommended that Claimants sell this stock; always as a profit and never pending an additional trade, however, Claimants continued to hold their position. Respondent further maintained that on January 31, 1989 he advised Claimants that the bid price had dropped from \$.12 to \$.10 per share at which time, Claimants instructed him to sell their 400,000 shares at \$.10. Respondent contended that he entered a ticket to sell Claimants 400,000 shares at \$.10 per shares to which he was advised by Investor Centers, Inc. trading department that they could not sell the entire 400,000 shares at \$.10 per share because this bid price was only good for an indeterminant number of shares but offered \$.08 per share for the entire 400,000 shares. Respondent further contended that he advised Claimants of the \$.08 offer and recommended Claimants sell their entire 400,000 shares, at which time, Claimants chose not to sell but instead inquired as to how many shares could be sold at the bid price of \$.10. Respondent asserted that he advised Claimants that the trading department informed him they could pay \$.10 for 25,000 shares and if the bid remained at \$.10 they could but 25,000 shares each additional day, at which time, Claimants specifically instructed him to sell 25,000 at the \$.10 bid price and gave these same specific instructions until the bid price dropped to \$.08 when Claimants instructed him to stop selling because they did not want less than \$.10 per share. Respondent further asserted that on or about February 16, 1989 he became concerned with Investors Center, Inc. future and convinced Claimants to sell their stock, at which time, Respondent entered tickets to sell their stock, unfortunately, even though Investors Center, Inc. reported the trades as being executed, they did not have enough capital to cover these trades, thus, causing losses to many of their clients. Respondent argued that he did not mishandle Claimant's accounts and that he followed Claimants instructions exactly, therefore, any losses incurred were as a result of Claimants actions.

RELIEF REQUESTED

Claimants, Donald & Ilene B. Raphael requested \$10,000.00 in actual damages plus interest at 9% per annum from January 31, 1989 together with attorneys' fees in the amount of \$1,150.00 and Punitive damages.

Respondent, Richard McGuire requested the claim be dismissed.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Martin Budd, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 23, 1991 and by the Respondent on June 25, 1991.

And, 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. The claims of the Claimants, Donald & Ilene B. Raphael against Respondent, Richard McGuire are dismissed.
2. The Claimants' request for Punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Donald & Ilene B. Raphael shall be retained by the NASD, Inc.

AFFIRMATION

I, MARTIN BUDD, 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

DATE OF DECISION: June 16, 1992