

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Blanche Hightower

91-00982

Name of Respondents

Otra Clearing, Inc.
Madison Chapin Associate, Inc.
Whitemark Corporation
Peter Panariello
Mindy Gesser
Steve Bernstein

REPRESENTATION

Claimant Blanche Hightower ("Claimant") appeared pro se.

Respondent Otra Clearing, Inc. ("Otra") was represented by Scott Monson, Esq. in-house counsel.

Respondent Peter Panariello ("Panariello") appeared pro se.

Respondent Mindy Gesser ("Gesser") was represented by Cynthia DiBartolo, Esq. of the law firm of Noah, Singer, Sayid & DiBartolo.

Whitemark Corporation ("Whitemark") did not appear.

Respondent Steve Bernstein ("Bernstein") did not appear.

Respondent Madison Chapin Associates, Inc. ("Madison Chapin") did not appear.

CASE INFORMATION

Statement of Claim filed: March 26, 1991.

Claimant's Submission Agreement signed on: March 20, 1991.

Statement of Answer filed by Respondent Otra on: November 4, 1991.

Respondent Otra's Submission Agreement signed on: November 4, 1991.

Statement of Answer filed by Respondent Panariello on: November 12, 1991.

Respondent Panariello's Submission Agreement signed on: December 6, 1991.

Respondents Madison Chapin, Whitemark, Gesser and Bernstein did not file Answers nor submit a Submission Agreement pursuant to Section 25 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: September 22, 1992, 2 sessions.

Hearing was held at the offices of the NASD in New York City.

CASE SUMMARY

Claimant alleged that she met with Respondents Panariello and Gesser, both employees of Respondent Madison Chapin, for the purpose of purchasing 40,000 shares of a company named Advertising Partners, Inc. Claimant further alleged that a few months later Respondent Panariello utilized Claimant's shares to purchase Whitemark stock, without Claimant's consent or knowledge, and when Claimant tried to call Respondent Panariello, Respondent Gesser each time stated he was unavailable and said she was unable to help Claimant. Claimant further alleged that a couple of months later Claimant was unable to communicate with Respondent Bernstein who took over Panariello's position, who told Claimant that Respondent Panariello had quit or quite possibly was terminated and his account files were in disarray and it would take some time to straighten them out. Claimant further alleged stock was sold without her consent, she received no written verifications of actions or transactions or materials to review on the new stock.

Respondent Otra maintained that its only role with respect to Claimant's account was to clear transactions pursuant to instructions from Respondent Madison Chapin and that Claimant had alleged no acts of wrongdoing against it. Respondent Otra further maintained it has no direct contact with the individual clients of Otra's correspondents and Otra had no duty or obligation to

Claimant to investigate the validity, authorization or suitability of any trade placed on Claimant's behalf by Respondent Madison Chapin. Respondent Otra asserted the following defenses: failure to state a claim, and that any injuries to Claimant were a result of actions of parties other than Respondent Otra.

Respondent Panariello maintained that Claimant presented herself to Respondent Madison Chapin to purchase a particular stock, Advertising Partners, and he handled the unsolicited order. Respondent Panariello further maintained Claimant authorized the purchase of Whitemark, and after Respondent Panariello left Respondent Madison Chapin he had no knowledge of her account.

Respondent Gesser appeared and moved for dismissal of the claim as against her on the ground of failure to state a claim. This motion was granted by the panel on the consent of Claimant.

Pre-hearing Motions to dismiss of Otra and Panariello were denied.

RELIEF REQUESTED

Claimant requested \$250,000 with interest in compensatory damages and \$50,000 with interest in punitive damages and out of pocket expenses.

Respondents Otra, Panariello and Gesser requested all claims against them be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. Respondent Panariello be and hereby is liable and shall pay Claimant the sum of \$1,900 inclusive of interest.

2. Respondent Otrabe and hereby is liable and shall pay Claimant the sum of \$75 inclusive of interest. In addition Respondent Otrabe shall clearly and in writing, with a copy to the NASD Arbitration Staff Attorney, inform Claimant of each and every option currently available to her with respect to the holding of her account, including retaining such account at Otrabe, transferring it to another broker or clearing house, selling the securities, or delivering same to her, and shall set forth the costs to Claimant associated with each of the above options prior to the assessment of any such costs. The panel retains jurisdiction over this matter pending receipt from the NASD Otrabe's notification to Claimant.
3. All claims against Respondent Gesser and Whitemark be and hereby are dismissed with prejudice in their entirety.
4. All claims against Respondent Madison Chapin and Respondent Bernstein are dismissed without prejudice for failure to effect service on those Respondents.
5. The Claimant's claim for punitive damages is denied.
6. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions x \$750 = \$1500 less hearing session deposit of \$750 = \$750 net due.

Respondents Otrabe and Panariello be and hereby are liable jointly and severally and shall pay the NASD the sum of \$1500 to represent forum fees.

Upon receipt of forum fees assessed against Respondents, the NASD shall reimburse to Claimant the sum of \$750 paid by her as a hearing session deposit.

The NASD shall retain the filing fee previously deposited by Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS' SIGNATURE

Name	Public/Industry
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Deborah Sherman
Deborah Sherman, Esq./Chairperson

Public

Lotte Fields

Public

Andrew Reegen

Industry

~~XXXXXXXXXXXXXXXXXXXXXXX~~

Date of Decision: October 27, 1992

STATE OF New York

55:

COUNTY OF Alameda

On this 23rd day of October 1992, before me personally appeared Robert J. [redacted] 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.

JOHN FRANCIS McHUGH
Rector, St. John's, South of New York
No. 82-4855140
Qualified in New York County
Commission Expires Feb. 1, 1968 73

CONCURRING ARBITRATORS' SIGNATURE

Name Public/Industry

Deboran Sherman, Esq., Chairperson

Public

Lotte Fields

Public

Andrew Reegen

Industry

Date of Decision: October 27, 1992

STATE OF *NY*

SS:

COUNTY OF *NY*

On this *21* day of *October* 1992, before me personally appeared *LOTTE FIELDS* 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.

Catherine A. Denighey

CATHERINE A. DENIGHEY
Notary Public, State of New York
Qualified in *NY* County
Commission Expires May 3, 1992

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CONCURRING ARBITRATORS' SIGNATURE


Name Public/Industry

Deborah Sherman, Esq./Chairperson

Public

Lotta Fields

Public


Andrew Reegen

Industry

Date of Decision: October 27, 1992

STATE OF *New York*

SS:

COUNTY OF *New York*

On this *26* day of *October* 1992, before me personally appeared *Andrew Reegen* 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.

MARK O. GLUT
Notary Public, State of New York
No. 4985193
Qualified in Queens County
Commission Expires April 20, 19 *94*