

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between :
Donald K. and Janet W. Pirie, JTWROS :
Claimants : CASE #91-01444
vs. : AWARD
Global America, Inc. :
Michael Markowski :
Michael Albro :
Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 9, 1991, Claimants, Donald K. & Janet W. Pirie who appeared Pro Se, alleged that on December 13, 1990 Respondent Michael Albro, a registered representative with Respondent Global America, Inc. made an authorized purchase of 1,000 shares of A G Automotive Warehouse, Inc. in their account and Claimants subsequently received a confirmation for this purchase. Claimants further alleged they received a second confirmation notifying them that on December 17, 1990 Respondent, Global America, Inc. made an unauthorized purchase of an additional 1,000 shares of A G Automotive Warehouse, Inc. in their account. Claimants contended they immediately notified Respondent Global America, Inc. of the error, at which time they were advised to disregard the second confirmation and that they would take care of it. Claimants further contended that on the same day they received the unauthorized purchase confirmation they received a confirmation of a sell order of shares of Capucions, a stock which they never owned. Claimants asserted that they have never received a cancellation for the unauthorized A G Automotive, Inc. purchase thus, leaving a debit balance in their account. Claimants further asserted that their account was liquidated to cover the debit balance made by the unauthorized purchase and that Respondents, Global America, Inc., Michael Albro and Michael Markowski, as Chairman, are liable for their losses due to the liquidation.

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Respondent, Michael Marowski by and through his counsel Leon B. Lipkin, Esq. of McLaughlin & Stern, Ballen and Ballen, New York, New York, maintained that Claimants, Donald K. & Janet W. Pirie alleged no facts against him and in fact, Claimants admit they had no contact with him but since he was the Chairman of Respondent, Global America, Inc. he should be held personally liable. Respondent, Michael Markowski further maintained that he cannot be held personally liable for Respondents, Global America, Inc. and Michael Albro's failure to correct the erroneous purchase of 1,000 shares of the common stock of A G Automotive Warehouse, Inc. in their account. Respondent Michael Markowski contended that officers and directors of corporations are not personally liable for the acts of the corporation, unless it can be shown that an individual officer or director participated in said act, which the Claimants admitted did not occur. Respondent Michael Markowski further contended that for the foregoing reasons, the claim against him should be dismissed.

Respondent, Michael Albro maintained that in December 1990 Claimants, Donald K. & Janet W. Pirie instructed him to purchase 1,000 shares of A G Automotive Warehouse, Inc. and payment was received a few days later. Respondent Michael Albro further maintained that several days later another 1,000 shares of A G Automotive Warehouse, Inc. were purchased in Claimants account without his knowledge, at which time he immediately notified Respondent's Global America, Inc. traders of the mistake and instructed them to write a sell ticket for the additional shares. Respondent Michael Albro contended that he spoke with the traders numerous times and was advised that the sell order would be taken care of. Respondent Michael Albro further contended that shortly thereafter, the traders at Respondent Global America, Inc. would not take his calls subsequently, the sell order was never done. Respondent, Michael Albro asserted that he cannot be held liable for the problems associated with Respondent, Global America, Inc.

Respondent, Global America, Inc. failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants, Donald K. & Janet W. Pirie requested \$8,283.35 in actual damages.

Respondent, Michael Markowski requested the claim be dismissed and be awarded costs together with attorneys' fees.

Respondent, Michael Albro requested the claim be denied.

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Respondent, Global America, Inc. failed to file an Answer to the Statement of Claim.

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Deborah Sherman, 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 May 4, 1991, by the Respondent, Michael Markowski on November 18, 1991 and not by Respondents, Michael Albro and Global America, Inc. as required by Section 12 and 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Global America, Inc. was served by regular mail on July 3, 1991 and given an opportunity to respond, which they failed to do so. Respondent, Global America, Inc. was notified on October 31, 1991, via certified mail, that their Statement of Answer was overdue. Respondent, Global America, Inc. was notified on November 21, 1991, via certified mail, of the selected arbitrator, pursuant to Section 22 of the NASD Code of Arbitration Procedure. The signed certified mail receipts were returned dated November 7, 1991 and November 26, 1991, respectively; evidencing their receipt of this correspondence. Respondent, Global America, Inc. failed to file and Answer to the Statement of Claim.
2. Pursuant to the By-Laws of the National Association of Securities Dealers, Inc. the arbitrator determined that Respondent Global America, Inc. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

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:

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1. Respondents, Global America, Inc., Michael Markowski and Michael Albro are jointly and severally liable and shall pay to the Claimants, Donald K. & Janet W. Pirie the sum of \$8,283.35 in damages.
2. Respondents, Global America, Inc. Michael Markowski and Michael Albro are jointly and severally liable and shall pay simple interest at the rate of 8% per annum from February 7, 1991 to the date of this award.
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 K. & Janet W. Pirie shall be retained by the NASD, Inc.

AFFIRMATION

I, Robert J. [illegible], 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]
Signature of Arbitrator

DATE OF DECISION: June 9, 1992