

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gary Ferrazzano

91-02376

Name of Respondents

Otra Clearing, Inc.
Madison Chapin Associates, Inc.
William R. Kelman
Anthony Ustica

REPRESENTATION

For Claimant Gary Ferrazzano ("Claimant"): he represented himself.

For Respondent Otra Clearing, Inc. ("Otra"): Scott G. Monson, Esq. of Otra

For Respondent Madison Chapin Associates, Inc. ("Madison"): no representative appeared for Madison at the hearing.

For Respondent William R. Kelman ("Kelman"): he participated by telephone and represented himself.

For Respondent Anthony Ustica ("Ustica"): he represented himself.

CASE INFORMATION

Statement of Claim filed: August 1, 1991.

Amendment to Statement of Claim filed: January 13, 1992.

Claimant's Submission Agreement signed on: December 23, 1991.

Statement of Answer filed by Respondent Otra on: September 20, 1991.

Respondent Otra's Submission Agreement signed on: September 18, 1991.

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Statement of Answer filed by Respondent Madison on: no document was filed, as required, pursuant to Section 25 of the Code of Arbitration Procedure ("Code").

Respondent Madison's Submission Agreement signed on: no document was filed, as required, pursuant to Section 12 of the Code.

Statement of Answer filed by Respondent Kelman on: no document was filed, as required, pursuant to Section 25 of the Code.

Respondent Kelman's Submission Agreement signed on: no document was filed, as required, pursuant to Section 12 of the Code.

Statement of Answer filed by Respondent Ustica on: November 27, 1991.

Respondent Ustica's Submission Agreement signed on: December 12, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: March 18, 1992/3 sessions.
March 19, 1992/2 sessions.

Hearing Location: NASD, Inc., New York City, NY.

CASE SUMMARY

Claimant alleged Otra and Madison sold his shares of Designcraft Jewel Industries, Inc. ("Designcraft") and warrants of Health Advancement Services ("Health") without his authorization. Claimant alleged he immediately notified both offices of these unauthorized trades requesting immediate reinstatement of both positions. Claimant stated that despite several communications with both offices no action was taken. Claimant noted he received a letter from Madison acknowledging that both trades were unauthorized. The letter also contained copies of cancellations and correct instructions sent to Otra.

Respondent Otra alleged it received instructions from Madison to execute sales of Designcraft and Health on behalf of Claimant's account. Respondent stated that at the time Madison sent Otra's "Cancel and Correct" instructions, Madison did not have a sufficient deposit/cash balance at Otra to enable it to execute the instructions. Otra alleged it acted according to standard clearing practices with respect to Claimant's account. Otra maintained it has no direct contact with the individual clients of Otra's fully

disclosed Correspondents and has no duty to investigate the authorization of a trade placed on Claimant's behalf. Otra stated it is without knowledge as to Claimant's allegations that the trades were unauthorized. Otra asserted that prior to Madison ceasing its business operations in July 1991, it sent numerous cancel and correct instructions to Otra regarding these and other trades, but Madison did not have a sufficient deposit/cash balance at Otra to execute all cancel and correct instructions and that Claimant was advised of Otra's inability to execute the cancellation of the trades. Otra denied all other allegations.

Respondent Madison alleged: it entered no formal allegations or denials.

Respondent Kelman alleged he was not liable for any unauthorized transactions which may have occurred in Claimant's account and maintained that all transactions were authorized by Claimant. Further, he asserted that he did not breach the fiduciary duty owed to Claimant and that he has never had an arbitration complaint lodged against him prior to the problems associated with Madison.

Respondent Ustica alleged he was not associated with Madison at the time the alleged unauthorized trades occurred. Ustica maintained he had resigned his position with Madison prior to the occurrence of the alleged unauthorized trades in Claimant's account.

RELIEF REQUESTED

Claimant requested: cancellation of both unauthorized trades and restoration of both stocks to his account; and exemplary damages in the amount of \$2,500.00 for aggravation.

Respondent Otra requested: that Claimant's Statement of Claim as to Otra be dismissed in its entirety; costs; travel costs and attorneys' fees. Otra further requested indemnification from Madison for any amounts expended in this arbitration matter.

Respondent Madison did not submit a Statement of Answer, nor did it attend the hearing, therefore, there is no formal relief requested by Madison.

Respondents Kelman and Ustica, although not entering a formal answer, did attend the hearing and at the hearing denied any liability for the losses asserted by Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties present at the hearing have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

1- Pursuant to the by-laws of the NASD, the arbitrator determined that Respondents, Madison and Kelman, were required to submit to this arbitration and, therefore, are bound by this arbitrator's rulings and determinations.

AWARD

After considering the pleadings; the testimony and the evidence presented at the hearings, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Otra, Madison and Kelman are jointly and severally liable to obtain and deliver to Claimant one thousand (1,000) common shares of Designcraft Jewel Industries Inc. and ten thousand (10,000) warrants of Health Advancement Services (both Designcraft Jewel Industries Inc. shares and Health Advancement Services warrants are referred to herein as the "Securities") upon payment by the Claimant to the Respondents of the amount of \$2,010, representing the net proceeds heretofore delivered to Claimant upon the sale by Otra of the Securities;
2. Liability among the Respondents is found to be Otra fifty percent (50%); Madison and Kelman, jointly and severally, fifty percent (50%);
3. To effect implementation of this award, Respondent Otra is directed, within twenty-one (21) business days of the date of this award, at its own expense, to obtain and deliver the Securities into an account to be designated by Claimant. The Securities shall be delivered by Otra to Claimant in exchange for payment by Claimant to Otra of the above stated amount of \$2,010;
4. Upon completion of the foregoing delivery of Securities to Claimant, Otra shall be entitled to indemnification and contribution by Madison and Kelman for a total of fifty percent (50%) of the Adjusted Net Cost (hereinafter defined) to Otra of obtaining the Securities. The Adjusted Net Cost to Otra of obtaining the Securities shall mean, the price Otra has paid to obtain the Securities, less the \$2,010 received by it from the Claimant;

5. The foregoing right of indemnification and contribution in favor of Otra against Madison and Kelman is based upon performance by Otra of this award in favor of Claimant and enforcement of Otra's resulting equitable right of indemnification and contribution against Madison and Kelman. The right of indemnification and contribution in favor of Otra against Madison is also based upon the cross claim by Otra against Madison. The total right of indemnification and contribution in favor of Otra against both Madison and Kelman combined, shall not exceed fifty percent (50%) of the Adjusted Net Cost to Otra of obtaining the Securities;
6. Claimant's claims against Respondent Ustica are dismissed;
7. Claimant's claim for exemplary damages are dismissed;
8. Respondent Otra's claims to be awarded its costs (including travel costs) and attorneys' fees are dismissed;
9. All other claims are dismissed;
10. Each party shall bear its own costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$50.00 non-refundable filing fee paid to the NASD by Claimant and the \$125.00 hearing session deposit paid to the NASD by Claimant.

Arbitrator's Signature:


Gerald T. DiManno/Public Arbitrator