

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

William & Elizabeth Rich

## Claimants

**vs.**

CASE #91-02720  
AWARD

Madison Chapin Associates, Inc.

OTRA Clearing Inc.

William Kellman

## Respondents

## CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 3, 1991, Claimants, William & Elizabeth Rich, who appeared Pro Se, alleged that in July, 1991 Respondents Madison Chapin Associates, Inc. and William Kellman sold their 20,000 shares of Health Advancement Services Warrants ("HASIW") without their knowledge or authorization. Claimants further alleged that when they received the confirmation of the unauthorized trade, they notified Respondents, Madison Chapin Associates, Inc. and William Kellman of the error and requested they cancel the trade. Claimants contended that Respondent William Kellman informed them that Respondent Madison Chapin Associates, Inc. had gone out of business but that he submitted to Respondent, OTRA Clearing, Inc. a "cancel and correct" form, which instructed them to cancel the unauthorized trade in their account. Claimants further contended that Respondent OTRA Clearing, Inc. informed them that they were unable to reinstate their trade because Respondent Madison Chapin Associates, Inc. did not have sufficient funds to execute the "cancel and correct" order. Claimants asserted that they have yet to get the unauthorized trade cancelled, even though they met the notification requirements as per their Customer Responsibilities. Claimants further asserted that Respondents, Madison Chapin Associates, Inc., William Kellman and OTRA Clearing, Inc. are equally liable for the losses incurred by Claimants due to the unauthorized trade.

Respondent, OTRA Clearing Inc. by and through their in-house counsel Scott G. Monson, Esq., maintained that they acted as clearing agent for Respondents Madison Chapin Associates, Inc. and William Kellman and had a contractual agreement whereby they provide

fully disclosed securities clearing services for Respondents. Respondent, OTRA Clearing, Inc. further maintained that they received instructions from Respondent, Madison Chapin Associates, Inc. to execute a sale of 20,000 shares of Health Advancement Services Warrants on behalf of Claimants account and mailed Claimants a confirmation of the trade. Respondent OTRA Clearing, Inc. contended that at the time Respondent William Kellman sent the "cancel and correct" instructions, Respondent, Madison Chapin Associates, Inc. did not maintain a sufficient deposit/cash balance to enable Respondent, OTRA Clearing, Inc. to execute the instructions. Respondent, OTRA Clearing, Inc. further contended that they advised Claimants of their inability to execute the cancel order. Respondent, OTRA Clearing, Inc. further maintained that they acted fully according to standard clearing practices with respect to Claimant's account and Respondent, OTRA Clearing, Inc. is not subject to any liability with respect to the Claimants and/or Claimants account. Respondent OTRA Clearing, Inc. asserted that they are without any knowledge or information with respect to Claimants allegations that the trade was unauthorized and have committed no error and in no way have caused any damage to Claimants. Respondent, OTRA Clearing, Inc. further asserted that Claimants have failed to make any allegations of improper conduct by Respondent, OTRA Clearing, Inc. and have filed a Motion to Dismiss.

Respondent, Madison Chapin Associates, Inc. failed to file an Answer to the Statement of Claim.

Respondent, William Kellman, by and through Elizabeth G. Kellman requested an extension of time until December 21, 1991, in which to file an Answer to the Statement of Claim, due to Respondent, William Kellman's hospitalization and disabling health problems. Respondent, William Kellman maintained that the financial hardship that his illness had imposed on him, make it impossible to retain counsel to represent him and requested the case be delayed until he is able to submit a Statement of Answer. Respondent, William Kellman, thereafter, did not file an Answer to the Statement of Claim.

#### RELIEF REQUESTED

Claimants, William & Elizabeth Rich requested \$2,770.00 in actual damages plus Punitive Damages and reimbursement of the NASD, Inc. filing fee.

Respondent, OTRA Clearing, Inc. requested the claim be dismissed in its entirety and they be awarded costs and attorney's fees.

Respondent, Madison Chapin Associates, Inc. failed to file an Answer to the Statement of Claim.

Respondent, William Kellman failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Janet Thomas Johnson, 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 August 26, 1991, by the Respondent, OTRA Clearing, Inc. on November 22, 1991 and not by Respondents, Madison Chapin Associates, Inc. and William Kellman, as required by Section 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Madison Chapin Associates, Inc. was served a copy of the Statement of Claim by regular mail on October 4, 1991 and given an opportunity to respond, which they failed to do. Respondent, Madison Chapin Associates, Inc. was notified on January 16, 1992, via certified mail, that their Statement of Answer was overdue. Respondent, Madison Chapin Associates, Inc. was notified on January 28, 1992, via certified mail, of the selected arbitrator, pursuant to Section 21 of the NASD Code of Arbitration Procedure. Respondent, Madison Chapin Associates, Inc. failed to file an Answer to the Statement of Claim.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent, Madison Chapin Associates, 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:

1. Respondent, Madison Chapin Associates, Inc. is liable and shall pay to the Claimants, William & Elizabeth Rich the sum of \$2,770.00 in damages.

2. The Claimants request for Punitive Damages is denied.
3. The claims of Claimants, William & Elizabeth Rich against Respondent, OTRA Clearing, Inc. are dismissed in their entirety.
4. The claims of Claimant, William & Elizabeth Rich against Respondent, William Kellman are dismissed without prejudice.
5. The parties shall bear their respective costs.
6. The \$125.0 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, William & Elizabeth Rich shall be retained by the NASD, Inc. Respondent, Madison Chapin Associates, Inc. is liable and shall pay to the Claimants the sum of \$125.00, as reimbursement.

AFFIRMATION

I, JANET THOMAS JOHNSON, 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.

  
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Signature of Arbitrator

DATE OF DECISION: May 22, 1992