

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Brian Gaffney :

Claimant :

vs. :

CASE #91-02919
AWARD

OTRA Clearing, Inc. :

Bill Kellman :

Madison Chapin Associates, Inc. :

Respondents :
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 19, 1991, Claimant, Brian Gaffney, who appeared Pro Se, alleged that in July, 1991, Respondents, Madison Chapin Associates, Inc. and Bill Kellman sold his 1,000 shares of Designcraft Jewel Industries, Inc. ("DJI") in his account, at a loss, without his knowledge or authorization. Claimant further alleged that when he received the confirmation of the unauthorized DJI sale, he notified Respondents, Madison Chapin Associates, Inc. and Bill Kellman of the error and requested they correct it. Claimant contended that he later received a "cancel and correct" form, which reflected the unauthorized trade as being cancelled in his account. Claimant further contended that when his account was transferred from Respondent, Madison Chapin Associates, Inc. to Sovereign Equity; the firm that merged with Madison Chapin Associates, Inc.; Claimant's account did not reflect the cancellation of the unauthorized trade, thus, creating losses in his account. Claimant asserted that Respondent, OTRA Clearing, Inc. was Respondent's Madison Chapin Associates, Inc. clearing broker, therefore, they are equally liable for his losses.

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 and Bill 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 Respondents, Madison Chapin Associates, Inc. and Bill Kellman to execute a sale of 1,000 shares common, of Designcraft Jewel Industries, Inc. on behalf of Claimant's account

and mailed Claimant a confirmation of the trade. Respondent, OTRA Clearing, Inc. contended that at the time Respondents Madison Chapin Associates, Inc. and Bill Kellman sent the "cancel and correct" instructions they 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 Claimant of their inability to execute the cancel. 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 Claimant and/or Claimant's account. Respondent OTRA Clearing, Inc. asserted that they are without any knowledge or information with respect to Claimant's allegations that the trade was unauthorized and have committed no error and in no way have caused any damage to Claimant. Respondent OTRA Clearing, Inc. further asserted that Claimant has 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, Bill Kellman, by and through Elizabeth G. Kellman requested an extension of time until December 13, 1991, in which to file an Answer to the Statement of Claim, due to Respondent, Bill Kellman's hospitalization and disabling health problems. Respondent, Bill Kellman maintained that the financial hardship that his illness has imposed on him, makes 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, Bill Kellman, thereafter, did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant, Brian Gaffney requested \$1,265.00 in actual damages plus 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, Bill 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, Allen Kilik, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 26, 1991, by the Respondent, OTRA Clearing, Inc. on January 3, 1992 and not by Respondents, Madison Chapin Associates, Inc. and Bill Kellman, as required by Sections 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 September 24, 1991 and given an opportunity to respond, which they failed to do. Respondent, Madison Chapin Associates, Inc. was notified on December 27, 1991, via certified mail, that their Statement of Answer was overdue. The signed certified mail receipt was returned date stamped January 3, 1992, evidencing their receipt of this correspondence. Respondent, Madison Chapin Associates, Inc. was notified on January 9, 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 Claimant, Brian Gaffney the sum of \$1,265.00 in damages.
2. The claims of Claimant, Brian Gaffney against Respondent, Bill Kellman are dismissed without prejudice.

3. The claims of Claimant, Brian Gaffney against Respondent, OTRA Clearing, Inc. are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Brian Gaffney shall be retained by the NASD, Inc.

AFFIRMATION

I, **ALLEN KILIK, 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

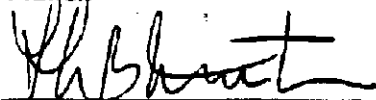
DATE OF DECISION: April 20, 1992

STATE OF: NEW JERSEY

SS:

COUNTY OF: ESSEX

On this 24th day of April, 1992, before me personally appeared **ALLEN KILIK, ESQ.** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



NOTARY PUBLIC
COUNTY OF NEW JERSEY
MY COMMISSION EXPIRES MAY 2, 1996