

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Marie & Jasper Spinelli :

Claimants :

vs. :

South Richmond Securities, Inc. :
Refco Securities, Inc. :

Respondents :

CASE #91-03142
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 8, 1991, Claimants, Marie & Jasper Spinelli, who appeared Pro Se, alleged that in July 1987 Respondent South Richmond Securities, Inc. purchased 850 shares of Medphone Corporation in their account and they received monthly statements from the clearing agent, Respondent, Refco Securities, Inc. Claimant further alleged that during 1989 they stopped receiving account statements from Respondent, Refco Securities, Inc. and when Claimants inquired about this, they were informed that inactive accounts generally did not receive frequent statements. Claimants contended that in February 1990 they instructed Respondent, South Richmond Securities, Inc. to sell their Medphone Corporation stock and were informed that Respondents were having trouble locating their account. Claimants further contended that Respondent South Richmond Securities, Inc. informed them they no longer had their account and advised them to contact Respondent Refco Securities, Inc. Claimants asserted that neither Respondents could locate their account or its holdings. Claimants further asserted that it was concluded that their account had been transferred without their knowledge or consent to Wall Street Clearing Company. Claimants further alleged that Wall Street Clearing Company informed them that their account was transferred from Respondent, Refco Securities, Inc. to another clearing agent, Investors Center, which has since completed bankruptcy filing. Claimants further contended that they have exhausted all avenues to recover their 850 shares of Medphone Corporation stock but have been unsuccessful. Claimants argued that Respondents, South Richmond Securities, Inc. and Refco Securities, Inc. inappropriate handling of their account and unauthorized transfer has caused them to incur losses.

Respondent, South Richmond Securities, Inc. by and through their outside counsel Bradford L. Jacobowitz, Esq. of Gusrae Kaplan & Bruno, New York, New York, maintained that Claimants, Marie & Jasper Spinelli purchased 850 shares of Medphone Corporation stock and that Respondent Refco Securities, Inc. acted as their clearing firm. Respondent, South Richmond Securities, Inc. further maintained that Respondent, Refco Securities, Inc. received an Automated Customer Account Transfer System form with instructions from Claimants to transfer their account to another clearing firm, Wall Street Clearing Company. Respondent, South Richmond Securities, Inc. contended that the transfer instructions form was dated and signed by the Claimants on May 16, 1988. Respondent, South Richmond Securities, Inc. further contended that Claimant's July 1988 monthly statement from Respondent, Refco Securities, Inc. indicated that Claimant's account had been transferred and delivered as Claimants instructed. Respondent, South Richmond Securities, Inc. asserted accordingly, in July 1988, they were no longer involved with Claimant's account, as the Claimants requested the transfer and the transfer was effectuated by Respondent, Refco Securities, Inc. Respondent, South Richmond Securities, Inc. further asserted that it denies any liability to the Claimants as Respondent Refco Securities, Inc. transferred the account pursuant to Claimant's signed instruction form.

Respondent, Refco Securities, Inc. by and through Ivan M. Brawer, maintained that Claimants authorized the transfer of their account by submitting a signed broker-to-broker transfer instruction form. Respondent, Refco Securities, Inc. further maintained that the instruction form was duly executed and that Respondent compared Claimant's signatures to the signature cards on file, which were found to be identical. Respondent contended that in July 1988, Claimants were sent a report which indicated that the securities in their account had been transferred on July 18, 1988 and the Claimants failure to act upon this information and any loss they may have incurred as a result, cannot be attributed to a lack of notice by Respondent, Refco Securities, Inc. Respondent further contended that Claimant's loss was not caused by any act or failure to act on the part of Respondent.

RELIEF REQUESTED

Claimants, Marie & Jasper Spinelli requested \$3,187.50 in actual damages.

Respondent, Refco Securities, Inc. requested the claim be dismissed.

Respondent, South Richmond Securities, Inc. requested the claim be denied and they be awarded reasonable costs, including attorney's fees...

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arnold O. Flicker, 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 September 17, 1991, by the Respondent, Refco Securities, Inc. on December 26, 1991 and by Respondent, South Richmond Securities, Inc. on January 13, 1992.

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, Refco Securities, Inc. is liable and shall pay to the Claimants, Marie & Jasper Spinelli the sum of \$956.25 in damages.
2. The claims of Claimants, Marie & Jasper Spinelli against Respondent, South Richmond Securities, Inc. are dismissed.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Marie & Jasper Spinelli shall be retained by the NASD, Inc. Respondent, Refco Securities, Inc. is liable and shall pay to the Claimants the sum of \$125.00 as reimbursement.

AFFIRMATION

I, ARNOLD O. FLICKER, 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.

Arnold O. Flicker
Signature of Arbitrator

DATE OF DECISION: March 26, 1992

STATE OF: New York

SS:

COUNTY OF: _____

On this 24th day of March 19 92, before me personally appeared Arnold O. Flicker, 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.

Valerie L. Bailey
VALERIE L. BAILEY
NOTARY PUBLIC, State of New York
No. 4940303
Qualified in Kings County
Commission expires July 18, 1992