

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Irineo P. Diaz, Jr. :

Claimant :

vs. :

Payton D. Crossley :

Respondent :

PUBLIC

CASE #91-03383
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 28, 1991, Claimant, Irineo P. Diaz, Jr., who appeared Pro Se, alleged that Respondent Payton D. Crossley, a registered representative with Dean Witter purchased 200 shares of Circus-Circus stock in his account on margin without his knowledge and subsequently, sold 35 shares of the stock at a loss. Claimant further alleged that Respondent informed him that he had to sell the 35 shares immediately because of his error and would reimburse Claimant for those losses in his account. Claimant contended that he is not a sophisticated investor and his investment objectives were conservative, low-risk, long term investments and that he has never purchased stocks on margin. Claimant contended that Respondent continued to solicit and recommend the purchase of other securities on margin without regard to Claimant's investment objectives or needs. Claimant asserted that Respondent mishandled his account by placing him in unsuitable, highly speculative securities on margin, thus, creating losses in his account.

Respondent, Payton D. Crossley by and through his counsel Anne K. Glynn, Esq., maintained that in May 1990 Claimant discussed purchasing Circus Circus Enterprises, Inc. ("Circus Circus") and later agreed to purchase 200 shares of Circus Circus with the belief he had enough equity to cover the purchase. Respondent further maintained that after the order was entered he realized there was only enough equity to cover 165 shares of the purchase, so he sold 35 shares which resulted in a loss to Claimant of approximately \$108.00. Respondent contended that Claimant was a knowledgeable investor and authorized every transaction. Respondent further contended that Claimant signed a margin agreement and that all investments were explained prior to any purchase. Respondent asserted that all securities purchased were

suitable for Claimant's investment objectives and that Claimant has not suffered any losses due to any improper handling of his account.

RELIEF REQUESTED

Claimant, Irineo P. Diaz, Jr. requested \$8,239.67 in actual damages.

Respondent, Payton D. Crossley requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John F. O'Connell, 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 October 22, 1991 and by the Respondent on December 23, 1991.

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, Payton D. Crossley is liable and shall pay to the Claimant, Irineo P. Diaz, Jr. the sum of \$120.00 in damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Irineo P. Diaz, Jr. shall be retained by the NASD, Inc. Respondent, Payton D. Crossley is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

AFFIRMATION

I, JOHN F. O'CONNELL, 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.

John F. O'Connell
Signature of Arbitrator

DATE OF DECISION: May 18, 1992

STATE OF:

ss:

COUNTY OF:

On this _____ day of _____, 19____, before me personally appeared John F. O'Connell, 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.
