

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Burt Reany :

Claimant :

vs. :

Madison Chapin Associates, Inc. :  
OTRA Clearing, Inc. :

Respondents :  
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CASE #91-03469  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 4, 1991, Claimant, Burt Reany who appeared Pro Se, alleged that in July, 1991 Respondent, Madison Chapin Associates, Inc. sold his 1,000 shares of Designcraft Jewel Industries, Inc. ("DJI") without his knowledge or authorization. Claimant further alleged that when he received the confirmation for the unauthorized trade, he notified Respondent, Madison Chapin Associates, Inc. of the error and requested they cancel the trade. Claimant contended that Respondent, Madison Chapin Associates, Inc. informed him that they submitted to Respondent, OTRA Clearing, Inc. a "cancel and correct" form, which instructed them to cancel the unauthorized trade in his account. Claimant further contended that Respondent, OTRA Clearing, Inc. informed him that they were unable to reinstate his trade because Respondent, Madison Chapin Associates, Inc. did not have sufficient funds to execute the "cancel and correct" order. Claimant asserted that he has yet to get the unauthorized trade cancelled. Claimant further asserted that Respondents, Madison Chapin Associates, Inc. and OTRA Clearing, Inc. are equally liable for the losses incurred by Claimant 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 Respondent Madison Chapin Associates, Inc. and had a contractual agreement whereby they provide fully disclosed securities clearing services for Respondent. Respondent, OTRA Clearing, Inc. further maintained that they received instructions from Respondent, Madison Chapin Associates, Inc. to execute a sale of 1,000 shares of Designcraft Jewel Industries on behalf of Claimant's account and mailed Claimant a confirmation of the trade.

Respondent, OTRA Clearing, Inc. contended that at the time Respondent 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 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 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.

#### RELIEF REQUESTED

Claimant, Burt Reany requested \$1,625.00 in actual damages plus \$1,625.00 in Punitive damages.

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.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Harry T. Dixon, Sr., 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 30, 1991, by the Respondent, OTRA Clearing, Inc. on December 19, 1991 and not by the Respondent, Madison Chapin Associates, Inc. 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 November 11, 1991 and given an opportunity to respond, which they failed to do. Respondent, Madison Chapin Associates, Inc. was reserved on December 30, 1991, via certified mail and given an opportunity to respond, which they failed to do. Respondent, Madison Chapin Associates, Inc. was notified on May 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.

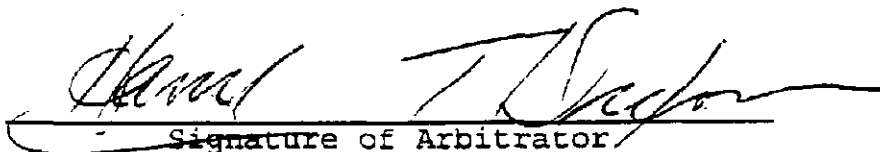
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent, Madison Chapin Associates, Inc. were required to submit to this arbitration proceeding and are, therefore, bound by the arbitrator's ruling and determination.

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, Burt Reany the sum of \$1,625.00 in damages.
2. Respondent, Madison Chapin Associates, Inc. is liable and shall pay to the Claimant, Burt Reany the sum of \$1,625.00 in Punitive damages.
3. The claim of Claimant, Burt Reany against Respondent, OTRA Clearing, Inc. is dismissed.
4. The parties shall bear their respective costs, including attorney's fees.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Burt Reany shall be retained by the NASD, Inc. Respondent, Madison Chapin Associates, Inc. is liable and shall pay to the Claimant, Burt Reany the sum of \$125.00 as reimbursement.

AFFIRMATION

I, HARRY T. DIXON, SR., 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

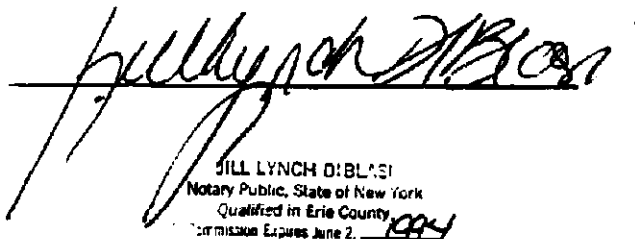
DATE OF DECISION: August 7, 1992

STATE OF: *New York*

SS:

COUNTY OF: *Erie*

On this 7 day of AUGUST 1992 before me personally appeared Harry T. Dixon, Sr., 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.

  
JILL LYNCH DIBLASI  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires June 2, 1994