

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Mark O'Malley

91-03490

Name of Respondents

Otra Securities Group Inc.
David Phillips

REPRESENTATION

For Claimant Mark O'Malley ("Claimant"): he appeared pro se.

For Respondents Otra Securities Group Inc. ("Otra") and David Phillips: J. Garry McAllister, of Otra Securities Group Inc.

CASE INFORMATION

Statement of Claim filed: January 3, 1992.

Claimant's Submission Agreement signed on: December 26, 1992.

Joint Statement of Answer filed by Respondents on: March 10, 1992.

Respondent Otra's Submission Agreement signed on: March 4, 1992.

Respondent Phillips' Submission Agreement signed on: March 4, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: October 26, 1992/2 sessions

Hearing Location: NASD, Inc. New York City, New York.

CASE SUMMARY

Claimant alleged that on February 12, 1990, Otra wired, without Claimant's authorization, a cash balance from his account to a third party - Trader's Preference Limited Partnership. Claimant alleged the wire instructions faxed to Otra contained a forged signature; were not notarized; were not authorized by anyone at Castleton Rhodes Incorporated ("Castleton"); were not signed by any principal of Castleton; nor did they have a signature guarantee.

Claimant alleged he phoned Castleton in April of 1991 and spoke to Joseph Vaini ("Vaini"). Claimant alleged Vaini obtained a copy of the wiring instructions for him and he, Claimant, was unsuccessful as he tried to locate the Trader's Preference Limited Partnership.

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Claimant alleged Phillips and Otra were negligent in the duty owed to him.

Respondents alleged on or about February 12, 1990, Otra wired a cash balance from Claimant's account pursuant to instructions received from Castleton; they are without information as to whether this wire transfer was authorized; they are without information to formulate a response regarding the remaining allegations regarding the wire instructions; and that they deny each allegation.

Respondents stated Otra's primary business is the carrying of accounts on a fully disclosed basis for other introducing brokers/dealers and the clearance and execution of transactions on behalf of those introducing brokers/dealers. Otra alleged it has no direct contact with the individual clients of its disclosed Correspondents; no duty or obligation to Claimant to investigate the validity, authorization or suitability of any trade placed on Claimant's behalf by Otra's Correspondent; that Castleton has the obligation to "know the customer", and Otra's only obligation was to follow instructions from Castleton.

Respondents alleged Claimant improperly named Phillips, individually as a Respondent, as all agreements executed and services performed were by and between Otra and Castleton; and that Phillips acted in his capacity as an employee of Otra and did not hold himself out to be acting in any other capacity.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$152,043.96.

Respondents requested: Claimant's Statement of Claim be dismissed in its entirety; costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

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- 1- The claims of Claimant Mark O'Malley are hereby dismissed;
- 2- All other claims are dismissed;
- 3- Each party shall bear its own expenses, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

2 sessions X \$750.00 = \$1,500.00 minus hearing session deposit of \$750.00 = net \$750.00 due.

Forum fees Assessed Against:

- 1- Respondents Otra and Phillips, jointly and severally, in the amount of \$750.00. Respondents shall also, jointly and severally, reimburse Claimant the sum of \$750.00 to represent the hearing session deposit.

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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures


Barry Feiden/Public Arbitrator


Allen Kilik/Public Arbitrator


Clifford A. Harwick/Industry Arbitrator

Date of Decision: October 27, 1992