

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

JUL 30 1992

Name of Claimant

Anthony J. DiStefano

91-03579

Name of Respondents

First National Brokerage Services Inc.
Ameritrade, Inc.

REPRESENTATION

For Claimant: Bruce H. Brodkey, Esq. of Omaha, Nebraska.

For Respondents: Patrick B. Griffin, Esq. of Rutak Rock & Campbell, Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 1991.

Amended Statement of Claim filed on: May 8, 1992.

Claimant's Submission Agreement signed on: August 22, 1991.

Statement of Answer filed by Respondent First National Brokerage Services on: December 26, 1991.

Statement of Answer filed by Respondent Ameritrade on: May 22, 1992.

Respondent First National Brokerage Services, Inc.'s Submission Agreement signed on: December 19, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 26, 1992 for two (2) sessions,
May 27, 1992 for two (2) sessions.

Hearing Location: Omaha, Nebraska.

CASE SUMMARY

Claimant, Anthony J. DiStefano ("DiStefano") alleged that on January 18, 1991, Respondent First National Brokerage Services, Inc. ("First National") wrongfully exercised certain February 1991 call options to cover a "short

position* created by the assignment of certain January 1991 options expiring January 18, 1991. DiStefano alleged that First National had covered the call with other assets in DiStefano's account. DiStefano alleged that the other assets included 175 options of Walt Disney Corporation. DiStefano further alleged that as a result of First National's actions without first consulting with DiStefano, DiStefano was therefore forced to prematurely liquidate Shamut National Corporation common stock, Dr. Pepper/Seven-Up subordinated notes, and RJR Nabisco Holding Corporation, Inc. subordinated debentures at further loss to DiStefano.

Respondent First National denied the allegations set forth in the Statement of Claim. First National alleged that their actions were in full accordance with the terms of the Account Application. First National alleged that according to the terms of the Account Application, DiStefano authorized Ameritrade, Inc., First National's clearing agent, in its discretion, to sell any or all of the securities held in DiStefano's account should Ameritrade for whatever reason deem it necessary for its protection. First National alleged that Ameritrade was wholly within its rights to exercise the February 1991 call options because Ameritrade considered itself to be at a substantial risk.

DiStefano, in his Amended Statement of Claim, added Ameritrade, Inc. as a Respondent to the action, alleging that as clearing agent for First National, they are equally responsible and accountable to DiStefano to the same extent as First National since it was Ameritrade who required First National to take action on January 18, 1991.

Respondent Ameritrade, in their Answer to the Amended Statement of Claim, generally denied the allegations set forth in the Amended Statement of Claim and incorporated and adopted on its own behalf the response and defenses which First National set forth in their Answer to the Statement of Claim.

RELIEF REQUESTED

The Claimant requested actual damages and losses in the amount of \$314,125.00 which are calculated as follows:

1. The Walt Disney Co. options expiring in February were sold at a price of \$106.00 in January, 1991, instead of the Respondent selling Claimant's January options valued at \$103.00. The February options reached a value prior to their expiration of \$129.00. In calculating Claimant's damages, Claimant assumes a value of \$120.00 which is 17 points higher than the \$103.00 value of the January options. Claimant multiplies 17,500 (175 options) by 17 to arrive at Claimant's loss on the February options in the amount of \$297,500.00.

2. The Dr. Pepper/Seven-Up subordinated notes which Claimant was thereafter required to sell on February 12, 1991, to cover losses in his portfolio due to Respondent's negligence were sold at \$37.50. The Dr. Pepper reached a value of \$82.25 on August 14, 1991. For purposes of NASD

calculating his losses, Claimant assumes a value of \$60.00 or an additional \$22.50. His loss on these notes was \$2,250.00.

3. The Shamut National Corporation common stock was also prematurely liquidated by the Claimant to cover his portfolio losses as a result of Respondent's negligence in dealing with the Walt Disney Co. options. The common stock was sold on February 7, 1991 at a price of \$4-1/8 for 5,000 shares. The Claimant paid \$4-1/8 when he purchased the stock. On August 14, 1991, the stock was valued at 10-7/8. In calculating his damages, the Claimant assumes a value of \$7.00 which results in a loss of \$14,375.00.

The Respondents requested that the Statement of Claim be dismissed and that the costs of the proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The Claimant Anthony J. DiStefano and Respondent First National Brokerage Services, Inc. entered into a Stipulation and Agreement that Anthony DiStefano shall file an Amended Statement of Claim adding Ameritrade, Inc. as a party Respondent herein.

Respondent Ameritrade, Inc. did not file with the NASD a properly executed Submission to Arbitration, but having answered the Statement of Claim and appeared at the arbitration, is bound by the panel's determination on all issues submitted for determination pursuant to Section 8 of the Code of Arbitration Procedure.

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:

1. The Statement of Claim is dismissed and denied in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions X \$750 = \$3000 minus hearing session deposit of \$750 = \$2250 plus the adjournment fee in the amount of \$750.00 = net \$3000 due.

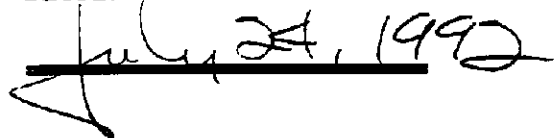
Forum fees Assessed Against: Claimant Anthony DiStefano in the amount of \$1000, and against Respondent First National Brokerage Services, Inc. in the amount of \$1000, and against Respondent Ameritrade, Inc. in the amount of \$1000.

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

By The Arbitration Panel:


Samuel Van Pelt, Chairperson
Public Arbitrator

Dated:


July 24, 1992

Thomas J. Tarsney, Esq.
Public Arbitrator

Gerald J. Stratman
Industry Arbitrator

Date Award Served By the NASD: _____

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By The Arbitration Panel:

Dated:

Samuel Van Pelt, Chairperson
Public Arbitrator

Thomas J. Tarsney, Esq.
Public Arbitrator

Gerald J. Stratman
Industry Arbitrator

July 15, 1992

Date Award Served By the NASD: _____

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

By The Arbitration Panel:

Dated:

Samuel Van Pelt, Chairperson
Public Arbitrator

Thomas J. Murphy, Esq.
Public Arbitrator

Gerald J. Sullivan
Industry Arbitrator

July 15, 1992

Date Award Served By the NASD: _____