

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Adnan Dada :

Claimant :

vs. :

J.W. Gant and Associates, Inc. :

James Chung :

Respondents :

CASE #91-03829
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 4, 1991, Claimant Adnan Dada, who appeared Pro Se, alleged that in April 1990, he opened an account with Respondent James Chung, a registered representative at Respondent J.W. Gant and Associates, Inc., at which time, he purchases 1,500 shares of Bali Jewelry, Ltd. at the price of \$2.625 per share and 300 shares of Texas Air Corporation at \$6.875 per share. Claimant further alleged that on May 18, 1990 he purchased 100 shares of SunMicro Systems, Inc. at \$29.375 per share through Respondents. Claimant contended that on June 11, 1990 he instructed Respondent to sell his 300 shares of Texas Air Corporation stock and his account was credited in the amount of \$2,137.42. Claimant further contended that if he intended to sell his 100 shares of SunMicro Systems, Inc. he would have instructed Respondent James Chung to sell his stock at the highest selling price of \$37.00 per share. Claimant asserted that in September 1990, he instructed Respondents to transfer his holdings in his account to Toluca Pacific Securities and thereafter, he ceased doing business with Respondents. Claimant further asserted that when his holdings in his account were transferred to Toluca Pacific Securities, it was discovered that his 100 shares of SunMicro Systems, Inc. and his \$2,137.42 in proceeds were not in his account, at which time, he contacted Respondents to inquire about the transfer and Respondents were unresponsive to his inquiries. Claimant further alleged that at that same time, he discovered that Respondents purchased 6,500 Bali Jewelry, Ltd. warrants and sold his 100 shares of SunMicro Systems, Inc. at \$32.00 per share, without his knowledge or consent. Claimant argued that since Respondents made the transfer, he has lost possession of his funds and stock, therefore, they are liable for his losses.

Respondent, J.W. Gant and Associates, Inc. by and through their counsel Lynne M. Hanson, Esq., of Dible & Co., P.C., Englewood, Colorado, maintained that in April 1990 Claimant Adnan Dada opened an account with their registered representative, Respondent James Chung and purchased 1,500 shares of Bali Jewelry, Ltd., in addition to 300 shares of Texas Air Corporation. Respondent J.W. Gant and Associates, Inc. further maintained that on May 18, 1990 Claimant purchased 100 shares of SunMicro Systems, Inc. Respondent J.W. Gant and Associates, Inc. contended that on June 11, 1990 Claimant sold his 300 shares of Texas Air Corporation stock and received a credit to his account of \$2,137.42. Respondent J.W. Gant and Associates, Inc. further contended that following Respondent James Chung's departure, another registered representative, Chris Holtkamp was authorized by Claimant to sell his 100 shares of SunMicro Systems, Inc. at a price of \$32.00 per share and to purchase 6,500 warrants of Bali Jewelry, Ltd. Respondent J.W. Gant and Associates, Inc. asserted that Claimant's account statement for the period ending July 27, 1990 confirmed ownership of 1,500 shares of Bali Jewelry, Ltd. stock, 6,500 Bali Jewelry warrants and a credit balance of \$176.92. Respondent J.W. Gant and Associates, Inc. further asserted that on September 26, 1990 pursuant to Claimant's written request they delivered to U.S. Clearing Corporation the entire contents of Claimant's account. Respondent J.W. Gant and Associates, Inc. argued that they did not misappropriate or lose any funds or securities belonging to Claimant and transferred the full contents of Claimant's account pursuant to his request.

Respondent James Chung, who appeared Pro Se, maintained that he was employed by Respondent J.W. Gant and Associates, Inc. from February 14 to June 22, 1990 as a licensed registered representative and sometime thereafter, between April 17, 1990 and May 18, 1990, he began to represent Claimant, Adnan Dada as his stockbroker. Respondent James Chung further maintained that Claimant had previously purchased 1,500 shares of Bali Jewelry at 2 5/8 and 300 shares of Texas Air Corp. at 6 7/8 in his account prior to Respondent James Chung servicing his account. Respondent James Chung contended that on May 18, 1990 Claimant authorized the purchase of 100 shares of SunMicro Systems, Inc. at 29 3/8. Respondent James Chung further contended that in May 1990 Claimant authorized a "good-till-cancelled" limit sell order at 7 3/8 for the 300 shares of Texas Air Corp. and on June 4, 1990, the limit order was executed, at which time, the proceeds of \$2,137.42 were credited to Claimant's account. Respondent James Chung asserted that on May 31, 1990, he had written to Claimant advising him to sell the 100 shares of SunMicro Systems, Inc. at market price and he was unable to contact Claimant, therefore, no sale order was placed. Respondent James Chung further asserted that while he represented Claimant as his stockbroker, he executed only two transactions; the purchase of 100 shares of SunMicro Systems and

the sale of 300 shares of Texas Air Corp. whereby both transactions were with the full consent of Claimant. Respondent James Chung further asserted that after his termination from Respondent J.W. Gant and Associates, Inc. on June 22, 1990, he had no control over Claimant's account, therefore, he cannot be held liable for Claimant's loss.

RELIEF REQUESTED

Claimant Adnan Dada requested \$2,137.42 in actual damages, plus the return of his 100 shares of SunMicro Systems stock together with \$4,000.00 in Punitive damages and reimbursement of the NASD filing fee.

Respondent J.W. Gant and Associates, Inc. requested the claim be dismissed and they be awarded costs together with attorney's fees.

Respondent James Chung requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Evelyn Ann Kramer, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 24, 1991, by the Respondent J.W. Gant and Associates, Inc. on March 17, 1992 and by the Respondent James Chung on February 19, 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 J.W. Gant and Associates, Inc. is liable and shall pay to the Claimant Adnan Dada the sum of \$6,142.46 in damages, at which time, Claimant is to return the 6,500 Bali Jewelry, Ltd. warrants to Respondent J.W. Gant and Associates, Inc. If Claimant no longer owns the 6,500 Bali Jewelry, Ltd. warrants then Respondent J.W. Gant and Associates, Inc. shall receive a credit against the amount of damages awarded to Claimant in such amount that Claimant realized upon the sale of the 6,500 Bali Jewelry, Ltd. warrants.
2. The claim of Claimant Adnan Dada against Respondent James Chung is dismissed.

3. The Claimant's request for Punitive damages is denied.
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 Adnan Dada shall be retained by the NASD, Inc. Respondent J.W. Gant and Associates, Inc. is liable and shall pay to the Claimant the sum of \$125.00 as reimbursement.

AFFIRMATION

I, EVELYN ANN KRAMER, 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: September 2, 1992