

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :
 :
 Wendley K. Kekauoha :
 :
 Claimant : CASE #91-04075
 : AWARD
 vs. :
 :
 Madison Chapin & Associates, Inc. :
 OTRA Clearing, Inc. :
 Bill Kellman :
 :
 Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 24, 1991, Claimant Wendley K. Kekauoha who appeared Pro Se, alleged that in July 1990 Respondents Madison Chapin & Associates, Inc. and Bill Kellman sold his 7,000 warrants of Health Advancement Service ("HASIW") in his account without his knowledge or authorization. Claimant further alleged that when he received the confirmation of the unauthorized HASIW sale, he notified Respondents, Madison Chapin & Associates, Inc. and Bill Kellman of the error and requested they correct it. Claimant contended that on July 28, 1990 he received a "cancel and correct" form, which reflected the unauthorized trade as being cancelled in his account. Claimant further contended that his account did not reflect the cancellation of the unauthorized trade, thus creating losses in his account. Claimant asserted that Respondent, OTRA Clearing, Inc. was Respondent's Madison Chapin & Associates, Inc. clearing broker, therefore, they are equally liable for his losses.

Respondent, OTRA Clearing, Inc. by and through their in-house counsel, Scott G. Monson, Esq., maintained that they acted as clearing agent for Respondents, Madison Chapin & Associates, Inc. and Bill Kellman and had a contractual agreement whereby they provide fully disclosed securities clearing services for Respondents. Respondent, OTRA Clearing, Inc. further maintained that they received instructions from Respondents, Madison Chapin & Associates, Inc. and Bill Kellman to execute the sale of 7,000 warrants of Health Advancement Services on behalf of Claimant's account and mailed Claimant a confirmation of the trade. Respondent, OTRA Clearing, Inc. contended that at the time Respondents Madison Chapin & Associates, Inc. and Bill Kellman sent the "cancel and correct" instructions they did not maintain a sufficient deposit/cash balance to enable Respondent

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OTRA Clearing, Inc. to execute the instructions. Respondent OTRA Clearing, Inc. further contended that they advised Claimant of their inability to execute the cancel. 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 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.

Respondent, Bill Kellman, by and through his wife, Elizabeth G. Kellman, requested an extension of time in which to file an Answer to the Statement of Claim. Respondent, Bill Kellman's wife maintained that his depression problem makes it impossible to retain counsel to represent him and requested the case be delayed until he is able to submit a Statement of Answer. Respondent Bill Kellman, thereafter, did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant, Wendley K, Kekauoha requested \$1,367.50 in actual damages.

Respondent, OTRA Clearing, Inc. requested the claim be dismissed in its entirety and they be awarded costs and attorneys' fees.

Respondent, Madison Chapin & Associates, Inc. failed to file an Answer to the Statement of Claim.

Respondent, Bill Kellman 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, Anne W. Larkin, 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 December 18, 1991 by the Respondent OTRA Clearing, Inc. on February 18, 1992 and not by Respondents, Madison Chapin & Associates, Inc. and Bill Kellman as required by Sections 12 and 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 by regular mail on January 8, 1992 and given an opportunity to respond, which they failed to do so. Respondent, Madison Chapin & Associates, Inc. was notified on February 19, 1992, via certified mail, that their Statement of Answer was overdue. Respondent Madison Chapin & Associates, Inc. was notified on February 26, 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. was required to submit to this arbitration proceeding and is, 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:

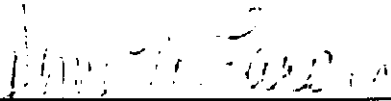
1. Respondent, Bill Kellman's request to delay this proceeding is denied.
2. Respondents, Madison Chapin & Associates, Inc. and Bill Kellman are jointly and severally liable and shall pay to the Claimant, Wendley K. Kekauoha the sum of \$762.50 in damages.

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3. The claims of Claimant, Wendley K. Kekaucha against Respondent, OTRA Clearing, Inc. are dismissed with prejudice.
4. The parties shall bear their respective costs, including attorneys' fees.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Wendley K. Kekaucha shall be retained by the NASD, Inc. Respondents, Madison Chapin & Associates, Inc. and Bill Kellman are jointly and severally liable and shall pay to the Claimant the sum of \$50.00 as reimbursement.

AFFIRMATION

I, ANNE W. LARKIN, ESO., 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: July 6, 1992