

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Meltzer Family Trust

92-00227

Name of Respondent(s)

Quick and Reilly, Inc.
Donald Primosch
William Lansburg

REPRESENTATION

For Claimant: The Meltzer Family Trust was represented by Nathan Maltzer.

For Respondents: Quick and Reilly, Inc., Donald Primosch and William Lansburg were represented by Joseph Corso of Quick and Reilly, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: January 22, 1992.

Claimant's Submission Agreement signed on: August 7, 1991 by Nathan Maltzer as Trustee, Meltzer Family Trust.

Joint Statement of Answer filed by Respondents Quick and Reilly, Inc., Donald Primosch and William Lansburg on: March 10, 1992.

Respondent Quick and Reilly, Inc.'s Submission Agreement signed on: March 9, 1992 by Joseph Corso, Director of Arbitration, Quick and Reilly, Inc.

Respondent Donald Primosch's Submission Agreement signed on: February 24, 1992.

Respondent William Lansburg's Submission Agreement signed on: February 20, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 1, 1992 for one (1) session with Arbitrator Charles R. Hoover, Esq.

Hearing Date/Sessions: June 26, 1992 for two (2) sessions.

Hearing Location: Phoenix, Arizona.

CASE SUMMARY

Claimant The Maltzer Family Trust ("Maltzer") alleged that Respondents William Lansburg ("Lansburg") and Donald Primosch ("Primosch"), while employed by or acting as agents for Respondent Quick and Reilly, Inc. ("Quick and Reilly"), negligently and fraudulently transacted a trade of common stock in his account. Maltzer specifically alleged as follows:

1. On December 26, 1989, Maltzer met with Lansburg and requested that Lansburg sell at market price 1,000 shares of Class B common stock of Chemical New York Corporation and 100 shares of Series B preferred stock of Manufacturers Hanover Corporation, and further told Lansburg not to call him back because he would be in to pick up the check on January 3, 1990;
2. Lansburg prepared and delivered to Maltzer a receipt evidencing the number of shares, the description of the stock and the certificate number;
3. On December 26, 1989, the 1,000 shares of Class B common stock of Chemical New York Corporation were selling at 2-3/4 per share and the 100 shares of Series B, cumulative preferred stock of Manufacturer's Hanover Corporation were selling at 36-3/4 per share, which should have resulted in a total amount due and owing to Maltzer of \$6,425.00;
4. On January 3, 1990, Maltzer went to Quick and Reilly and received a check for \$29,000.00, whereupon Maltzer indicated that the check was more than he was entitled to for the sale of the above shares. Upon investigation, Maltzer was informed that the wrong stock was sold and shares of the common stock of the above corporations had been sold;
5. On January 3, 1990, the Respondents, through Maltzer's account, bought back the shares of common stock at a higher price than that at which it was erroneously sold, charging Maltzer for the loss incurred and, additionally, for the commissions for the sale and the purchase of the wrong stock and the stock owned by Maltzer; and
6. On January 10, 1990, Maltzer returned to Quick and Reilly and was presented with a check in the sum of \$4,200.00 instead of \$6,425.00.

Respondents Quick and Reilly, Lansburg and Primosch denied the material allegations of the Statement of Claim alleging that:

1. Maltzer contacted the Quick and Reilly office by telephone on the morning of December 26, 1989 regarding the sale and verified the accuracy of the sell order after Lansburg read it back to him;
2. Later on December 26, 1989, Maltzer arrived at the office and delivered the stock certificates;
3. On December 27, 1989, confirmations were mailed to Maltzer indicating the sale made and no complaint was made by Maltzer; and
4. Respondents were not responsible for Maltzer incorrectly acknowledging the accuracy of the sale order.

RELIEF REQUESTED

Claimant Maltzer requested entry of an award in the sum of \$1,861.99 in actual damages plus interest at the legal rate from and after the date of sale.

Respondents Quick and Reilly, Lansburg and Primosch requested that the arbitrator dismiss Claimant's claim in its entirety.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Quick and Reilly, Inc. is liable for and shall pay to Claimant The Maltzer Family Trust whatever portion, if any, of the sum tendered to Claimant in January 1990 (i.e., the \$4,200.00 sum referred to in Case Summary paragraph 6) that has not been paid to Claimant, plus the sum of \$1,861.99 plus interest at the rate of 10% per annum from January 3, 1990 until the amount is paid in full;
2. The claims against Respondents Don Primosch and William Lansburg are hereby dismissed and denied in their entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

4. Respondent Quick and Reilly, Inc. is liable for and shall pay to Claimant The Maltzer Family Trust the sum of \$25.00 representing the claim filing fee being retained by the National Association of Securities Dealers, Inc.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session + Two (2) hearing sessions x \$25.00 per session = \$75.00.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$25.00 and refund the hearing session deposit of \$25.00 previously deposited by the Claimant The Maltzer Family Trust. Respondent Quick and Reilly, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$75.00.

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

ARBITRATOR'S SIGNATURE

Dated:

Charles R. Hoover
Charles R. Hoover, Esq.

September 3, 1992

Date of Service on Parties:

September 10, 1992