

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Corey Goldstein

vs.

92-00315

Name of Respondent(s)

Castle Securities Corp.
V P Securities, Inc.
Nick Ferrara

vs.

Michelle Hersh

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 28, 1992, Claimant Corey Goldstein, by and through Edward Edelstein, Esq., Flushing, NY, alleged that on September 7, 1990, his stepdaughter, Michelle Hersh was hired by Respondent Castle Securities Corp., as a broker trainee, and subsequently on September 18, 1990 he transferred his IRA account to Respondent Castle Securities Corp. whereby Respondent Nicholas Ferrara was listed as the Account Executive because Michelle Hersh, as a broker trainee was not licensed, at which time, Claimant's opening balance was \$18,214.07. Claimant further alleged that on October 3, 1990 he instructed his broker trainee, stepdaughter Michelle Hersh, to make four purchases in his account, all of which were done exactly as requested, with the expressed investment plan to have a position of approximately 1/2 in cash and 1/2 in stock. Claimant contended that he later received confirmations for the four purchases that he authorized, in addition to a confirmation that showed 1/2 of his total account had been converted from cash into an unauthorized purchase of 1,500 shares of Great American Golf Works. Claimant further contended that he immediately contacted his stepdaughter, trainee broker, Michelle Hersh at Respondent Castle Securities Corp. to ask her to correct the unauthorized trade of Great American Golf Works in his account, at which time, his stepdaughter, trainee broker, Michelle Hersh took every step to correct Respondent Nicholas Ferrara's unauthorized trade. Claimant

asserted that Respondent Nicholas Ferrara's inappropriate handling of his account with the unauthorized trade and Respondents' Castle Securities Corp. and V.P. Securities failure to rectify the error, caused him to sustain losses.

Respondent Castle Securities Corp. by and through their in-house counsel Charles M. O'Rourke, Esq., maintained that on or about October 3, 1990 they executed five order tickets to purchase stocks for the IRA account of the Claimant Corey Goldstein at the direction of Respondent Nicholas Ferrara and subsequently, on October 4, 1990 Claimant's stepdaughter, Michelle Hersh, began "handling the account". Respondent Castle Securities Corp. further maintained that on or about October 22, 1990 the Claimant submitted a written authorization to transfer his account to V.P. Securities, including the subject 1,500 shares of Great American Golf Works whereby, on November 27, 1990 Ms. Hersh, now a former registered representative of Respondent Castle Securities Corp. and a present registered representative of Respondent V.P. Securities, filed a written customer complaint with respect to the subject alleged unauthorized trade. Respondent Castle Securities Corp. contended that the subject shares, along with the entire IRA account were already "in transfer" preempting their possession, control and resolution and the Claimant never requested redelivery of the subject shares to Respondent Castle Securities Corp. Respondent Castle Securities Corp. further contended that they deny knowledge of or participation of any kind in the subject alleged unauthorized trade and at all times acted in good faith in executing customer trades and handling the IRA account at the direction of its registered representatives, Michelle Hersh and Respondent Nicholas Ferrara.

Respondent Castle Securities Corp. asserted a Cross-claim against Respondents V.P. Securities and Nicholas Ferrara whereby they be indemnified for any liability of Respondent Castle Securities Corp. arising from the actions or events complained of by Claimant is the result of the acts or omissions made by Respondents V.P. Securities and Nicholas Ferrara.

Respondent Castle Securities Corp. asserted a Third Party Claim against Third Party Respondent Michelle Hersh for her negligence and inappropriate handling of Claimant's account.

Respondent Nicholas Ferrara by and through his counsel Howard E. Greenberg, Esq., Sole Practitioner, Hauppauge, New York, maintained that Claimant Corey Goldstein held an account at Respondent Castle Securities Corp. whereby his broker was his stepdaughter. Third Party Respondent Michelle Hersh and Respondent Nicholas Ferrara never spoke directly with Claimant. Respondent Nicholas Ferrara further maintained that all transactions in the account were authorized by Claimant, including the transfer of the account from Respondent Castle Securities Corp. to Respondent V.P. Securities. Respondent Nicholas Ferrara contended that an investigation of this matter by the NASD compliance staff determined that no action was warranted concerning his activities, therefore, he is not liable for any alleged damages.

Third Party Respondent Michelle Hersh, who appeared Pro Se, maintained that on October 3, 1990 she submitted the four authorized "Buy Orders" for Claimant Corey Goldstein.

at which time, she was assisted by Douglas Shebroc, who was overseeing the trades at Respondent Castle Securities Corp. Third Party Respondent Michelle Hersh further maintained that when she discovered the unauthorized trade for the purchase of 1,500 shares of Great American Golf Works in Claimant's account, she immediately attempted to correct it. Third Party Respondent Michelle Hersh contended that Respondent Nicholas Ferrara continually reassured her that the paperwork to correct the unauthorized trade in Claimant's account had already been submitted. Third Party Respondent Michelle Hersh further contended that since she was not licensed until October 4, 1990, the trades of October 3, 1990 were made under Account Executive number 132. Respondent Nicholas Ferrara, whereby she received credit for the four authorized trades shown on Respondent Nicholas Ferrara's commissions statement marked "REP 156" and Respondent Nicholas Ferrara was credited for the unauthorized trade. therefore, she is not liable for any loss and should be dismissed from this proceeding.

RELIEF REQUESTED

Claimant Corey Goldstein requested \$9,760.00 in actual damages plus interest.

Respondent Castle Securities Corp. requested the claim be dismissed in its entirety and in the alternative they be granted their Cross-claim and Third Party claim for indemnification and they be awarded costs, including reasonable attorney's fees.

Respondent Nicholas Ferrara requested the claim be dismissed and the Cross-claim be denied.

Third Party Respondent Michelle Hersh requested the Third Party Claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arnold O. Flicker, 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 January 24, 1992, by the Respondent Castle Securities Corp. on July 1, 1992, by Respondent Nicholas Ferrara on April 22, 1992 and not by Respondents V.P. Securities, Inc. and Michelle Hersh as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent V.P. Securities, Inc. was served a copy of the Statement of Claim by regular mail on February 7, 1992 and given an opportunity to respond, which they failed to do.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent V.P. Securities, Inc. were 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. Respondents Castle Securities Corp., V.P. Securities, Inc. and Nicholas Ferrara are jointly and severally liable and shall pay to the Claimant Corey Goldstein the sum of \$9,750.00 in damages.
2. Respondents Castle Securities Corp., V.P. Securities, Inc. and Nicholas Ferrara are jointly and severally liable and shall pay to the Claimant Corey Goldstein simple interest at the legal statutory rate from October 3, 1990 to the date of payment of the award.
3. The Cross-claims of Respondent Castle Securities Corp. against Respondents Nicholas Ferrara and V.P. Securities, Inc. are dismissed.
4. The Third Party Claim of Third Party Claimant Castle Securities Corp. against Third Party Respondent Michelle Hersh is dismissed.
5. The parties shall bear their respective costs, including attorney's fees.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Corey Goldstein shall be retained by the NASD, Inc. Respondents Castle Securities Corp., V.P. Securities, Inc. and Nicholas Ferrara are jointly and severally liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.
7. The \$575.00 filing fee previously deposited with the NASD, Inc. by the Respondent Castle Securities Corp. shall be retained by the NASD, Inc.

AFFIRMATION

I, **ARNOLD O. FLICKER, 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.

Arnold O. Flicker

Signature of Arbitrator

DATE OF DECISION: December 15, 1992

STATE OF: *New York*

ss:

COUNTY OF: *Queens*

On this 9 day of Dec 1992, before me personally appeared **Arnold O. Flicker, Esq.** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

[Signature]

JOAN HYMOWITZ
NOTARY PUBLIC, State of New York
No. 01000000000000000000
Qualified by *Queens* County
Commission Expires April 21, 1994