

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Peggy and Boyd Black

Case No. 92-00387

Name of Respondent(s)

Profile Investments Corporation
OTRA Clearing Inc.

REPRESENTATION

For Claimants, Peggy and Boyd Black ("the Blacks"): Howard N. Kahn, Esq. of Atlas, Pearlman & Trop, P.A.

For Respondent, Otra Clearing, Inc. ("Otra"): Scott G. Monson, Esq. of Otra.

Respondent, Profile Investment Corp. ("Profile"): failed to file an Answer.

CASE INFORMATION

Statement of Claim filed: December 19, 1991. Claimants' Submission Agreement signed: December 19, 1991.

Respondent, Otra's, Statement of Answer filed: June 16, 1992. Respondent's Submission Agreement signed: June 16, 1992 by Scott G. Monson on behalf of Otra.

Respondent, Profile Investment Corp. did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code. (see "Other Issues")

HEARING INFORMATION

None.

CASE SUMMARY

Claimants first filed a Statement of Claim against Respondent, Otra, and later filed an Amended Statement of claim, naming Profile as an additional Respondent. Claimants alleged that Respondents were liable for: negligence; negligent safekeeping of assets; and, breach of fiduciary duty. Claimants alleged that Respondent, Otra, made an unauthorized sale of C SQUARE stock from Claimants' account, and effectuated an unauthorized stop-payment on a check from Otra to Claimants in the amount of \$20,730.62.

Respondent, Otra, denied all allegations of wrongdoing and alleged that: they did not make an unauthorized sale of C SQUARE stock from Claimants account but, rather that, Claimants transferred said stock to a new broker in November 1989. Further Respondent, Otra, alleged that the stop payment of the check for \$20,740.62 was proper in light of the fact that a "buy order" for Claimants account was effectuated, through Profile, on april 14, 1989, for 225,000 warrants of TRIANGLE GROUP, INC. at .09 cents per warrant for a total cost of \$20,260 and at the time of settlement Claimants had a debit balance in their account at Otra, and did not cover the cost of the "buy order" in any other fashion.

Respondent, Otra, alleged the affirmative defenses of: failure to state a claim; lack of contract with and duty to Claimants; lack of proximate cause; no breach of duty; no breach of contract with Profile; waiver and, estoppel.

Respondent, Profile, failed to file an Answer.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$20,000 plus interest; punitive damages for breach of fiduciary duty; and, recovery of costs.

Respondents requested dismissal of the Claim and recovery of costs and attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Sections 8 and 12 of the NASD Code of Arbitration Procedure ("Code").

2. This arbitrator finds that Respondent, Profile, being an NASD member firm at the time the facts giving rise to the controversy occurred, was required to file a Statement of Answer and to sign a Submission Agreement pursuant to Sections 12 and 25 of the Code.

3. Based on the evidence contained in the file, this arbitrator finds service on and adequate notice to Profile. The NASD has made every attempt to locate and serve Profile with notice of this proceeding as demonstrated by the evidence contained in the NASD's file.

AWARD

Pursuant to Section 14(a) of the NASD, Inc. Code of Arbitration Procedure ("Waiver of Hearing") a single arbitrator, James Cormack, was selected to review and determine the matter in controversy between the parties based solely upon the documents submitted by the parties. The arbitrator, having considered the proofs of the parties, including any additional documentary submissions of the Claimants and the Respondents has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, the Claim is hereby dismissed.
2. Claimants' request for punitive damages and costs is denied.
3. Respondent, Otr's, request for cost and attorney's fees is denied.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure the arbitrator has assessed forum fees in the amount of \$300.

1. Claimants are hereby assessed \$300 for which the NASD shall retain the \$300 previously deposited by Claimants in full satisfaction thereof.
2. The NASD shall retain the \$100 non-refundable filing fee previously deposited by Claimants.

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Concurring Arbitrators' Signatures

James A. Cormack
James A. Cormack

Public

Date of Decision: January 7 1994