

**PUBLIC**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between  
Terence K. Gray  
Claimant  
vs.  
Global America, Inc.  
Joseph Riccio  
Michael Markowski  
Respondents

CASE #92-00883  
AWARD

### CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 13, 1992, Claimant Terence K. Gray by and through his counsel Michael P. Murray, Esq., Sole Practitioner, Stamford, Connecticut, alleged that on January 11, 1991 he instructed his account representative, Scott Follett of Respondent Global America, Inc. to sell from his account the following common stock and warrants on the NASDAQ exchange: 1,500 shares of AGAWA; 2,400 shares of AGAWZ; 1,200 shares of CINO; 600 shares of CINOW; 1,000 shares of VODK; 200 shares of VODKU; and 1,200 shares of NYCM. Claimant further alleged that at the close of business on that same day, Respondent Global America, Inc. by and through Scott Follett called to inform him that the stocks had been sold whereby the proceeds from these transactions amounted to \$8,193.73. Claimant contended that in spite of his repeated demands for these proceeds, Respondent has failed to make payment. Claimant further contended that he had extensive conversation with Respondent Joseph Riccio, an executive with Respondent Global America, Inc. and Respondent Michael Markowski, it's President, explaining the situation and requesting payment. Claimant asserted that demand letters were mailed on January 6, 1992, and thereafter Claimant received the subject stock certificates in the mail, indicating that Respondent Global America, Inc. never made the sales when ordered to do so. even though the sales were confirmed. Claimant further asserted that the prices of these securities have fallen since January 11, 1991 and remain below the prices quoted by Respondent Global America, Inc. Claimant argued that Respondents did not, and have not given him the funds due and owing from these transactions.

Respondent Michael Markowski, by and through his counsel, Richard J. Blumberg, Esq., of McLaughlin & Stern, Ballen and Ballen, New York, New York, maintained that he denies any liability for the alleged losses claimed by Claimant and never did any business with Claimant nor has any information regarding Claimant's claim. Respondent Michael Markowski further maintained that Respondent Global America, Inc. voluntarily ceased doing business on January 16, 1991 when the firm concluded that it was in violation of the net capital requirements and Respondent Michael Markowski is not the president of Respondent Global America, Inc. having resigned on or about February 1, 1991. Respondent Michael Markowski contended that as a general proposition of law, an officer of a corporation cannot be held responsible for the debts of the corporation unless that officer has personally assumed said debts or alternatively personally acted either in a fraudulently or negligent manner with respect to a specific transaction. Respondent Michael Markowski further contended the fact that Claimant alleges he received verbal confirmation from his representative, Scott Follett, does not of itself constitute a contractual obligation binding Respondent Global America, Inc. and Claimant's own admission he never received confirmation from Respondent Global America, Inc., thus, his reliance on Scott Follett's alleged representations does not create a contractual obligation. Respondent Michael Markowski asserted that Claimant had an obligation to mitigate his damages and if in fact the securities were not sold, Claimant had an obligation to sell such securities and would only be entitled to the difference between what he claims the security should have been sold for and what he would have received. Respondent Michael Markowski further asserted that he cannot be personally held liable for the obligation of Respondent Global America, Inc., thus, the claim against him should be dismissed.

Respondent Joseph Riccio failed to file an Answer to the Statement of Claim.

Respondent Global America, Inc. failed to file an Answer to the Statement of Claim.

#### RELIEF REQUESTED

Claimant Terence K. Gray requested \$8,193.75 in actual damages plus interest at the rate of 9% per annum from January 11, 1991 to March 11, 1992 for the total amount of \$860.35 together with attorney's fees in the amount of \$475.00 and reimbursement of the NASD filing fee plus punitive damages and any other relief the arbitrator deems appropriate.

Respondent Michael Markowski requested the claim be dismissed.

Respondent Global America, Inc. failed to file an Answer to the Statement of Claim.

Respondent Joseph Riccio 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, Paul T. Green, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 28, 1992 and not signed by the Respondents 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 Respondents Global America, Inc. and Joseph Riccio were served a copy of the Statement of Claim by regular mail on March 13, 1992 and given an opportunity to respond, which they failed to do.

Respondent Joseph Riccio was notified on April 10, 1992, via certified mail, that his Answer was overdue. The signed certified receipt was returned dated May 11, 1992, evidencing his receipt of this correspondence. Respondents Global America, Inc. and Joseph Riccio were notified on May 5, 1992, via certified mail, of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. Respondents Global America, Inc. and Joseph Riccio failed to file an Answer to the Statement of Claim.

2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondents Global America, Inc. and Joseph Riccio were required to submit to this arbitration proceeding and are, 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:

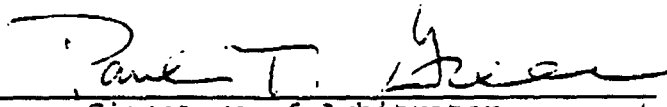
1. Respondents Global America, Inc., Joseph Riccio and Michael Markowski are jointly and severally

liable and shall pay to the Claimant Terence L. Gray the sum of \$8,154.10 in damages inclusive of interest.

2. The Claimant's request for attorney's fees is denied.
3. The Claimant's request for punitive damages is denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Terence K. Gray shall be retained by the NASD, Inc.

AFFIRMATION

I, **PAUL T. GREEN**, 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.

  
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Signature of Arbitrator 1

DATE OF DECISION: November 10, 1992