

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John & Diva Brullmann

02-00991

Name of Respondents

National Financial Services Corporation
Brian Mitchell
Austin Securities, Inc.

REPRESENTATION

For Claimants John & Diva Brullmann ("Claimants"): John Brullmann represented the Claimants.

For Respondent National Financial Services Corporation ("NFSC"): Michael Shannon, Esq. of the law firm of Summit Solomon & Feldesman.

For Respondents Brian Mitchell ("Mitchell") and Austin Securities, Inc. ("Austin"): Michael Periman, Esq.

CASE INFORMATION

Statement of Claim filed: March 17, 1992.

Claimant's Submission Agreement signed on: March 16, 1992.

Statement of Answer, Cross claim and Third Party Claim filed by Respondent NFSC on: June 4, 1992.

Respondent NFSC's Submission Agreement signed on: June 2, 1992.

Joint Statement of Answer filed by Mitchell and Austin on: June 12, 1992.

Mitchell's Submission Agreement signed on: June 12, 1992.

Page 2.

Award #02-00991

Austin's Submission Agreement signed on: June 12, 1992.

HEARING INFORMATION

Hearing Date/Session: November 4, 1992, one session.

Hearing Location: NASD Office, New York City, New York.

CASE SUMMARY

Claimants alleged that Respondent Mitchell made unauthorized trades in their account, that he made commission overcharges and committed trading errors in the purchases and sales of Keystone Street. Claimants alleged that Respondents Mitchell and Austin wrongfully stopped payment on a check to Claimant without notice to Claimant. Claimant alleged that Respondents improperly and negligently mishandled their account.

NFSC denied that any act or omission on its part caused Claimants any losses or damages. NFSC maintained that its involvement on Claimants' account was only as the clearing broker for Austin. NFSC's role as clearing broker was limited to a contractual relationship between NFSC and Austin. NFSC maintained that the nature of the contractual relationship between NFSC and Austin was designed to eliminate any direct contact between NFSC and customers of Austin, including Claimants. NFSC asserted a cross claim that to the extent any liability is assessed against it, it is entitled to recover such amount from Mitchell. NFSC asserted a Third Party Claim against Austin that in the event NFSC is found to be liable for damages or losses claimed by Claimants, NFSC is entitled to recover such amount from Austin.

Respondents Mitchell and Austin denied any and all wrongdoing in connection with the Claimants' account. Mitchell and Austin maintained that all trades made for Claimants' account were expressly authorized. Mitchell and Austin maintained that all charges made on Claimants' account were appropriate and that there were no over charges. Mitchell and Austin maintained that no trades were made in error. Mitchell and Austin maintained that they promptly responded to Claimants requests to have funds sent to the Claimants. Mitchell and Austin maintained that the check sent to "Joan" Brullmann was an unintentional error. Mitchell and Austin maintained that the ultimate cause of losses sustained by Claimants was due to their own actions.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$24,624.00, treble damages in the amount of \$70,821.00 and punitive damages in the amount of \$25,000.00.

NFSC requested costs and expenses from the Claimants and cross claimed for indemnification from Mitchell and asserted a third party claim against Austin for indemnification.

Mitchell and Austin requested that Claimants' claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain 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. That Respondent NFSC's Motion to Dismiss is granted.
2. That Respondents Mitchell and Austins' Motion to Dismiss is granted.
3. That all claims asserted by the Claimants are denied in their entirety.
4. That pursuant to the request for damages specified at the hearing by Respondent NFSC, Claimant John Brullmann is liable to NFSC and shall pay to NFSC the sum of \$474.14. This amount reflects money received by Mr. Brullmann from NFSC based on checks which were subsequently found to be insufficient.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

That the hearing session fee previously deposited by the Claimants shall be retained.

Page 4.

Award #02-00991

Concurring Arbitrators' Signatures
Name

Public/Industry

A handwritten signature in cursive script, appearing to read "R.D. Wilson".

Robert D. Wilson, Esq.
Chairman

A handwritten signature in cursive script, appearing to read "R.D. Wilson".

Public Arbitrator

Date of Decision: December 14th, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 11 day of June, 1992, before me personally appeared Robert D. Wilson known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Sharon L. Wilson

Notary Public State of
New York

No 31-4970893


Commission in New York County
Commission Expires 8/26/94

Page 4.

Award #02-00901

Concurring Arbitrators' Signatures
Name

Public: Industry



Ronald B. Curry

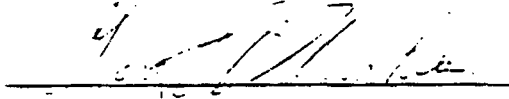
Industry Arbitrator

Date of Decision: December 14th, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this day of , 1992, before me personally appeared Ronald B. Curry known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



GEORGE A. MICHAEL
NOTARY PUBLIC, State of
New York
Qualified 1992
Term Expires 1995

Page 4.
Award #02-00991

Concurring Arbitrators' Signatures
Name



John E. Rothschild

Public/Industry

Public Arbitrator

Date of Decision: December 14th, 1992

STATE OF: New York
COUNTY OF: New York

S.S.I.

On this 4th day of December, 1992, before me personally appeared **John E. Rothschild** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Fred C. Rusterholz

FRED C. RUSTERHOLZ
Notary Public, State of New York
No. 24-3409115
Qualified in Kings County
Cert. Filed in New York County
Commission Expires Dec. 31, 1996