



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Henry Bobker c/f Mali Chaya Bobker

92-01020

Name of Respondent

J. Gregory & Company, Inc.

REPRESENTATION

For Claimant: Henry Bobker, Pro Se.

For Respondent: Jacqueline Goode, Financial Operations Principal of J.
Gregory & Company, Inc.

CASE INFORMATION

Statement of Claim filed: March 19, 1992.

Claimant's Submission Agreement signed on: March 11, 1992.

Statement of Answer filed by Respondent, J. Gregory & Company, Inc. on: June
3, 1992.

Respondent, J. Gregory & Company, Inc.'s Submission Agreement signed on: May
2, 1992.

HEARING INFORMATION

Hearing Date/Session: September 16, 1992 - One Session.

Hearing Location: NASD, Inc. - New York, NY.

CASE SUMMARY

Claimant alleged that unauthorized transactions occurred in his account while
it was held at Manchester-Rhone Securities. Claimant alleged that when he
spoke to the broker, he was advised that there was a bookkeeping error, and
it would be corrected.

Respondent maintained that the transaction complained of took place at Manchester-Rhone Securities. Respondent maintains that they are not, nor have they ever been a successor in interest to Manchester-Rhone Securities. Respondent maintains that they are not liable for the transactions that occurred at Manchester-Rhone.

RELIEF REQUESTED

Claimant requested that the unauthorized transactions be rescinded or, in the alternative, damages in the amount of \$2,500.00

Respondent requested that the Claim be dismissed in its entirety and that attorney's fees be awarded against the Claimant.

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, J. Gregory & Company, Inc. is hereby liable and shall pay to the Claimant in the amount of \$729.00 (SEVEN HUNDRED TWENTY NINE DOLLARS AND 00/XX).
2. Claimant is hereby directed to assign the 740 shares of Tround International, Inc. in account No. 639-70289 to Respondent, J. Gregory & Company, Inc.
3. The award shall bear pre-judgment interest at the New York legal rate from March 1992 until paid.

While the wrongs complained of (unauthorized trading) occurred at a prior firm (Manchester-Rhone Securities) by the actions of that firm's Account Executive (Greg Giordano) I find as a matter of fact that it was Mr. Giordano who authorized the transfer of Claimant's account to Respondent, with which he became associated in December 1991. While Respondent apparently sent a customary "negative consent letter" concerning the account transfer to Claimant (to which he did not object) Claimant, nevertheless did complain to Mr. Principe of Respondent J. Gregory & Company, Inc. in February/March 1992 concerning the mishandling of his account by Mr. Giordano and filed his claim with the NASD promptly thereafter. Claimant had, for a number of months previously complained to Mr. Giordano who stated that the Tround buy had been due to a clerical mistake and I therefore find it was not "authorized".

While there was no proof here that the transfer of the Manchester-Rhone accounts to the Respondent was pursuant to a customary Assets Purchase Agreement (and its attendant Bulk Sales Law problems) or that monetary consideration passed between Respondent and Manchester-Rhone for the transfer of these accounts, Respondent knew or should have known that it was taking over not only the good accounts but also the problem Manchester-Rhone accounts and should have protected itself accordingly. Negative consent letters should invite the Customer to speak up now or forever hold his/her peace. Indemnification agreements, escrowed funds, or other arrangements are not uncommon.

Claimant also complained of an unauthorized buy of American Health Services but on this stock, he sustained no loss and, in fact, obtained a modest gain. Claimant also sought punitive damages. Respondent retorted that the Arbitrator was without power to grant punitive damages. No copy of the Customers Agreement was introduced nor was reference made to Garrity v. Lyle Stuart or Barbier v. Shearson Lehman upon which Respondent probably relies. I do not find it necessary to reach a decision on the punitive damage issue because there was no proof of gross negligence or malicious conduct that customarily supports an award of punitive damages.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing fee: \$25.00
Hearing Session Fee: \$25.00

1. Respondent, J. Gregory & Company is hereby liable for all forum fees in the amount of \$50.00. Respondent is directed to re-imburse to the Claimant the sum of \$50.00 that the Claimant has previously deposited with the NASD.

Arbitrator's Signature
Name

Public Chairperson

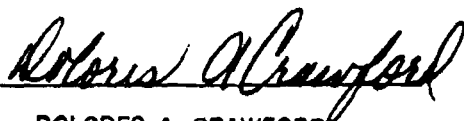
Michael J. Shalley
Michael J. Shalley, Esq.

Date of Decision: September 30, 1992

STATE OF NEW JERSEY ss.:

COUNTY OF MONMOUTH

On this 22nd day of SEPTEMBER 1992, before me personally appeared Michael J. Shalley, 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.



DOLORES A. CRAWFORD
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 29, 1993