

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Otra Clearing, Inc.

Case No. 92-01246

Name of Respondent(s)

Carl and Stephanie Canter

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**REPRESENTATION**

For Claimant, Otra Clearing, Inc. ("Otra"): Dennis A. Nowak, Esq. of Kirkpatrick & Lockhart.

For Respondents, Carl and Stephanie Canter, ("the Canters"): Hank Vanderkam, Esq. of Vanderkam & Sanders.

**CASE INFORMATION**

Statement of Claim filed: April 7, 1992. Claimant's Submission Agreement signed: April 29, 1992 by Scott Monson.

Respondents, Carl and Stephanie Canter, Statement of Answer filed: July 17, 1992. Respondents' Submission Agreement signed: July 15, 1992.

**HEARING INFORMATION**

On June 8, 1993, in Fort Lauderdale, Florida a hearing lasting two (2) sessions was conducted.

**CASE SUMMARY**

Claimant alleged that Respondents ordered their bank to stop payment on a check which was to be negotiated as payment for the purchase of 600,000 shares of "Salvatori Ophthalmics, Inc." stock for an account Respondent, Stephanie Canter maintained with Profile Investment Corporation. The check was made payable to Profile Investment Corporation and then endorsed to Claimant, who provides clearing services for trades made by Profile Investment Corporation. Claimant did provide clearing services for the trade of 600,000 shares of Salvatori Ophthalmics,

Inc. which were bought for Respondents' account with Profile Investment Corporation. Upon Claimant presenting the check for payment at Respondents' bank, payment was refused. Claimant further alleged that the Savatori Ophthalmics Inc. stock which was originally purchased for Respondent was later sold by Claimant, who incurred a loss of \$63,070.00.

Respondents denied all allegations of wrongdoing and alleged that their order for shares of Salvatori Ophthalmics, Inc. was to be made at a price not to exceed \$.05 per share; however, the purchase was made at \$.165 per share. Respondents further alleged that immediately upon discovery of the actual purchase price they notified Profile Investment Corporation who advised them the mistake would be corrected. In order to insure the mistake would be corrected, the Respondents issued a stop payment order on the check.

Respondents alleged the affirmative defenses of: (a) the purchase was an unauthorized trade; (b) Claimant did not incur a loss; (c) damages were a result of negligence on the part of the Claimant; and (d) no privity of contract between Claimant and Respondents.

#### **RELIEF REQUESTED**

Claimant requested damages of \$63,070.00 plus interest and costs.

Respondents requested attorney's fees and costs.

#### **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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondents' request for attorney's fees and costs are denied.

#### **OTHER COSTS**

None.

**FORUM FEES**

(1) Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,200.00 (2 sessions x \$600.00).

(2) Claimant is hereby assessed \$600.00 for which the NASD shall retain the \$600.00 previously deposited in full satisfaction thereof.

(3) Respondents are hereby assessed \$600.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

(4) The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signatures:

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Nancy J. Cliff, Esq.

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Public

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Mean Dell Rothman-Tell, Esq.

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Public

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John N. Breazeale

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Industry

Date of Decision: \_\_\_\_\_

08/02/93