

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
 :
V. Arthur Russo :
 :
 : Claimant :
 : CASE #92-01591
vs. : AWARD
 :
Waterhouse Securities, Inc. :
 :
 : Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 8, 1992, Claimant V. Arthur Russo by and through his counsel George W. Lipp, Jr., Esq., Sole Practitioner, Venice, Florida, alleged that on November 29, 1991, at approximately 11:00 a.m., he contacted Respondent Waterhouse Securities, Inc., by and through John Holman, to inform him that he was interested in selling his 25 Alabama Power Company First Mortgage bonds whereby Mr. Holman advised Claimant that the market was 106 bid and 107 offered, at which time, Claimant directed the sale at market, and subsequently at 12:45 p.m. that day he received a call that only 19 of the bonds were sold. Claimant further alleged that he contacted Respondent by and through, Mr. Holman to cancel the sale, but Mr. Holman told him he didn't think that was possible and ten minutes later, Mr. Holman told Claimant he could not cancel the sale. Claimant contended that Respondent by and through Mr. Holman, called him on December 12, 1991 to advise him that he didn't have a clean sale of the Alabama Power bonds and that he would have to buy back 19 at 110, whereby Mr. Holman suggested he would try to find other options and would call Claimant back, which he did not do. Claimant further contended that he had no responsibility because Respondent failed to take immediate action after being told of the call on November 29. Claimant asserted that Respondent consummated the buy back by means of numerous unilateral transactions by debiting Claimant's account and selling some of his shares, therefore, Respondent should restore his original position.

Respondent Waterhouse Securities, Inc. by and through Robert F.X. Bohrer, Vice President of Compliance, maintained that Claimant V. Arthur Russo is attempting to create a diversion by taking issue over a second phone call to Respondent on November 29; however,

Respondent acknowledges a second phone call took place but denies Claimant informed them of an impending bond redemption during any phone call on that date. Respondent further maintained Mr. Holman would have gained no benefit by failing to act on the information had Claimant in fact provided it. Respondent contended that on November 29, 1991 Claimant placed an order to sell \$25,000 Alabama Power Bonds at "market", the best price immediately available at the time the order reaches the executing facility whereby Claimant's bonds were sold at market for a price of 106. Respondent further contended that Mr. Holman telephoned Claimant to ask if he could cancel his order, but Mr. Holman told him the sale had already been reported and could not be cancelled, at which time, Claimant indicated he understood and did not protest nor mention that a portion of the bonds sold were called. Respondent asserted that had they been informed \$19,000.00 bonds were called, it would have affected an immediate buy back. Respondent further asserted that on December 20, 1991 Respondent was advised by the Depository Trust Company of the call and they immediately advised Claimant whereby he refused to take action, thus, forcing Respondent to buy back the \$19,000.00 bonds at 108 1/2 to cover the "short" position. Respondent argued that when Claimant refused to cover the debit, they had to sell some shares in Claimant's account pursuant to the Customer's Agreement.

RELIEF REQUESTED

Claimant V. Arthur Russo requested \$1,603.00 in actual damages plus \$534.00 in reasonable attorney's fees.

Respondent Waterhouse Securities, Inc. requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John F. Snyder, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 28, 1992 and by the Respondent on July 13, 1992.

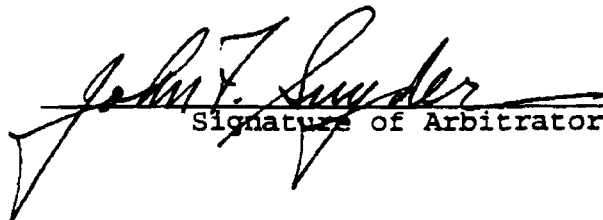
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Waterhouse Securities, Inc. is liable and shall pay to the Claimant V. Arthur Russo the sum of \$1,602.69 in damages.

2. The Claimant's request for attorney's fees is denied.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant V. Arthur Russo shall be retained by the NASD, Inc. Respondent Waterhouse Securities, Inc. is liable and shall pay to the Claimant the sum of \$50.00 as reimbursement.

AFFIRMATION

I, JOHN F. SNYDER, ESQ., 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.



Signature of Arbitrator

DATE OF DECISION: November 2, 1992