

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stanley Jurczyk

vs.

92-02511

Name of Respondent(s)

First American Biltmore Securities, Inc.
Gary Graham
J. Gordon Nevers

CASE SUMMARY

In a claim filed with the National Association of Securities Dealer, Inc. on July 30, 1992 Claimant Stanley Jurczyk who appeared Pro Se alleged that on February 03, 1992 he opened an account with Respondent First American Biltmore Securities, Inc. and subsequently on February 12, 1992 he sent three stocks; Leridges Int'l Inc., Monolite Ind's Inc. and Power-Save Int'l Inc. for his account. Claimant further alleged that he made it known to Respondent Gary Graham, Account Executive with Respondent First American Biltmore Securities, Inc. that he wanted him to "bring the stocks up to date," and on March 06, 1992, Respondent Gary Graham called Claimant to notify him that he sold the Power-Save stocks for 25 cents without first informing Claimant of the price. Claimant contended that on April 15, 1992 Respondent Gary Graham called to inform Claimant that there was a 1 for 35 reverse split on Power-Save and that Claimant owed \$1,449.75 to buy back the stock at \$0.75. Claimant further contended that he never received a transmittal form from Power-Save in reference to the 1 for 35 reverse split, and because of poor management and Respondent's action Claimant suffered a loss.

Respondents First American Biltmore Securities, Inc. and J. Gordon Nevers by and through J. Gordon Nevers, President maintained that Respondent Gary Graham sold 2,000 shares of Power-Save and he called to advise Claimant Stanley Jurczyk of the sale price, and subsequently, Claimant received a confirmation of the transaction. Respondents First American Biltmore Securities, Inc. and J. Gordon Nevers further maintained that Claimant did not complain or request a reversal of the transaction during the phone call or when he received the confirmation report. Respondents First American Biltmore Securities Inc. and J. Gordon Nevers contended that this matter was investigated by the NASD Regional Office and no disciplinary action was taken, therefore, the claim should be dismissed.

Respondent Gary Graham who appeared Pro Se maintained that Claimant Stanley Jurczyk informed him he was sending stock that he owned to have it sold for another investment. Respondent Gary Graham further maintained that he contacted Claimant to inform him it was worth to sell and Claimant instructed him to sell it, at which time, Claimant advised him to use the proceeds to purchase another stock. Respondent Gary Graham contended that when he advised Claimant of the reverse split and he owed additional money, Claimant sent the payment, therefore, Claimant was aware of the number of shares.

RELIEF REQUESTED

Claimant Stanley Jurczyk requested \$1,449.75 in actual damages.

Respondents First American Biltmore Securities, Inc. and J. Gordon Never requested the claim be dismissed.

Respondent Gary Graham requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Linda J. Solway was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 21, 1992 by the Respondent First American Biltmore Securities, Inc. on October 05, 1992, Respondent Gary Graham on October 05, 1992 and not by Respondent J. Gordon Nevers as required by Section 12 and 13 of the NASD Code of Arbitration Procedure.

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. The claim of Claimant Stanley Jurczyk against Respondents First American Biltmore Securities, Inc., Gary Graham and J. Gordon Nevers is dismissed.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Stanley Jurczyk shall be retained by the NASD, Inc.

AFFIRMATION

I, LINDA J. SOLWAY , 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: January 20, 1993