

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Financial Institution Clearing Services

92-02588

Name of Respondent

Mohamad Vatani

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 3, 1992, Claimant, Financial Institution Clearing Services, by and through their in-house counsel, Charles E. Scarlett, Esq. alleged that they placed an unsolicited open order to buy 6000 shares of Intergraph stock through their registered representative, David Rainey ("Rainey") on behalf of the Respondent, Mohamad Vatani ("Vatani") on September 23, 1991 pursuant to Vatani's instructions and subsequent to the execution of a customer agreement by Vatani. On the following morning, September 24, 1991, Vatani called Financial Institution Clearing Services, Inc. and asked to speak with Rainey; however, Rainey was not in the office due to illness and would be in at approximately 12:00 PM. Respondent Vatani was referred to the only other broker in the office, Mr. Jeff Tanner ("Tanner") who upon being asked by Vatani whether his trade had been executed allegedly stated that he did not know and that he had not received confirmation from the Claimant that the trade had been executed. Respondent Vatani informed Tanner that he needed to cancel the order and asked if Tanner could cancel the order instead of Rainey. As alleged, Tanner said the he would take care of it since Rainey was not in and placed the cancellation order with the trader at approximately 10:57 AM. The original trade was executed at approximately 10:58 AM. One of the Claimant's traders informed Tanner that since the buy order for 6000 shares of Intergraph had been executed it could not be canceled. Rainey, after arriving at the office at approximately 12:00 PM, called the Respondent at home and left a message on his answering machine indicating the buy order made completed and asked him to return the call. On September 25, 1991, Rainey called Vatani and explained that the cancellation order was too late and that he had purchased the 6000 shares of Intergraph. After Vatani said that he could not pay for the stock, Rainey contacted the Claimant's President, Mr. Dennis Ferguson and was told to sellout the position and that Vatani would be responsible for the debit. Rainey contacted Vatani, informed him of the procedure and asked him if he could pay for the trade; Vatani responded that he did not have the money. Rainey place the sell order which resulted in an unsecured debit.

Respondent Vatani, by and through his counsel, John R. Wynn, Esq. of Lanier, Ford, Shaver & Payne, P.C. in Huntsville, AL maintained that following a meeting with Rainey on September 23, 1991 the Respondent attempted on numerous occasions to reach Rainey by telephone yet was unsuccessful. As alleged, Vatani began to lose confidence in Rainey after he could not reach him by telephone and because Vatani's messages had not been returned by Rainey. Vatani asserted that Tanner told him that the buy order had not been executed and based that and having lost confidence in Rainey, Vatani placed a buy order for 7,000 shares of Intergraph from a broker with Prudential Securities, Inc. on September 24, 1991 which was executed the same day. Vatani maintained that the debit was a result of the Claimant's and Rainey's failure to cancel the buy order as instructed. Respondent Vatani asserted the following affirmative defenses:

1. The Claimant breached its contract with the Respondent and is not entitled to claim any damages.

2. Based upon the representations of the Claimant that the transaction had not been executed and would be canceled, the Respondent placed an order for 7000 shares of Intergraph Corporation stock with Prudential Securities, and the Claimant is estopped thereby from claiming any damages arising from Claimant's transaction.

3. The Claimant breached paragraph 9 (b) of the Customer's Agreement between the parties dated September 23, 1991. by failing to follow the Respondent's instructions in every respect.

RELIEF REQUESTED

Claimant Financial Institution Clearing Services requested \$5,194.00 in actual damages plus attorneys fees and the costs of arbitration.

Respondent, Mohamad Vatani requested that the claim be dismissed and requested attorneys fees and costs of arbitration.

AWARD

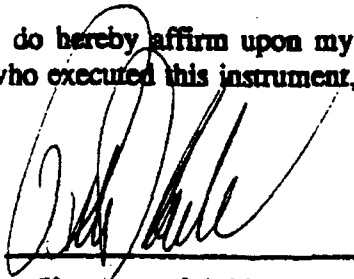
Pursuant to Section 14 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Peter J. Towle, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by Claimant on July 30, 1992 and by the Respondent on September 18, 1992.

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 Mohamad Vatani is liable for and shall pay to the Claimant Financial Institution Clearing Services, Inc., the sum of \$1,500.00 in damages.
2. The parties shall each bear their respective costs of the arbitration and attorney's fees.
3. The \$500.00 filing fee previously filed with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD. The NASD shall retain \$75.00 of the \$300.00 hearing session deposit previously filed with the NASD by the Claimant and shall refund \$225.00 to the Claimant. Respondent Mohamad Vatani is liable for and shall pay to the Claimant the amount of \$287.50 as partial reimbursement for their filing fees.

AFFIRMATION

I, Peter J. Towle, 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: 7/30/93