

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

The Pershing Division of
Donaldson Lufkin & Jenrette Securities Corp.

92-02924

Name of Respondent(s)

Mark P. Bric

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 1, 1992 Claimant The Pershing Division of Donald Lufkin & Jenrette Securities Corp. by and through their in-house counsel Michael D. Udoff, alleged that in December 1991, Respondent Mark P. Bric, a public customer, opened a Personal Control Financial Network ("PCFN") account whereby Respondent through his personal computer, directed trades to be made in his account. Claimant further alleged that, in accordance with Respondent's instructions, Claimant purchased and sold shares of several different stocks on behalf of Respondent, whereby, on April 3, 1992 Claimant notified Respondent that because of recent purchases, in addition to a drop in value in his securities, the balance of Respondent's margin account was significantly below the level required for his account agreement, at which time, Claimant exercised its right and duty to demand additional funds or securities. Claimant contended that when Respondent notified Claimant that he was unable to satisfy his debt, Claimant gave notice to Respondent and exercised their right to liquidate Respondent's account by selling his stock. Claimant further contended that after the liquidation, Respondent's debt was still \$7,251.57 and upon demand by Claimant, Respondent acknowledged his debt and agreed to repay the remaining debt plus interest. Claimant asserted that on April 8, 1992 they mailed to Respondent a promissory note pursuant to the terms of the oral agreement as well as a request to sign the note and return it with the first payment by April 15, 1992. Claimant further asserted that having no response, they mailed another letter dated April 30, 1992 whereby Respondent has failed to pay the debit balance in his account which remains due and outstanding.

Respondent Mark P.Bric has failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant The Pershing Division of Donald Lufkin & Jenrette Securities Corp., requested \$7,540.40 in actual damages plus interest at the rate of 9% per annum from June 26, 1992 and reimbursement of the NASD filing fee.

Respondent Mark P. Bric failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Casandra Mihalchik, 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 August 20, 1992 and not by the Respondent as required by Section 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent was served by regular mail on September 16, 1992 and given an opportunity to respond, he failed to do so.
2. Respondent Mark P. Bric was notified on November 5, 1992, via certified mail, that his Answer was over due. The signed certified receipt was returned to the NASD dated November 9, 1992, evidencing his receipt of this correspondence. Respondent was notified on November 10, 1992, via certified mail, of the selected arbitrator, pursuant to Section 21 of the NASD Code of Arbitration Procedure. The signed certified mail receipt was returned to the NASD dated November 14, 1992, evidencing his receipt of this correspondence.
3. Respondent Mark P. Bric failed to file an Answer to the Statement of Claim.
4. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Mark P. Bric was required to submit to this arbitration proceeding and is therefore, bound by the arbitrator's ruling and determination.

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 Mark P. Bric is liable and shall pay to the Claimant The Pershing Division of Donald Lufkin & Jenrette Securities Corp. the sum of \$7,540.40 in damages.
2. Respondent Mark P. Bric is liable and shall pay to the Claimant The Pershing Division of Donald Lufkin & Jenrette Securities Corp. simple interest at the rate of 9% per annum from June 26, 1992 to the date of payment of the award.
3. The parties shall bear their respective costs.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant The Pershing Division of Donald Lufkin & Jenrette Securities Corp. shall be retained by the NASD. Respondent is liable and shall pay to the Claimant the sum of \$575.00, as reimbursement.

AFFIRMATION

I, CASANDRA MIHALCHICK, 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: March 2, 1993