

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bernard W. Lifka

92-03072

Name of Respondents

J.W. Gant & Associates, Inc.
Troy Lowman

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 14, 1992, Claimant Bernard W. Lifka, who appeared Pro Se, alleged that in February 1992 he opened an account with Respondent J.W. Gant & Associates, Inc., after being solicited by Respondent Troy Lowman, Account Executive of Respondent J.W. Gant & Associates, Inc. Claimant further alleged that after his first three transactions, he gave specific instructions to Respondent Troy Lowman that he did not want to put anymore money into his account; in that his instructions were to try to grow the account, whereby, his instructions were to grow the account but to sell before he bought in which to limit buys to an amount including fees and commissions that would be covered by the prior sale. Claimant contended that this procedure was followed on the next eight transactions; and then his account went downhill: it seemed every buy was the high "ask" and every sell at the low "bid" price. Claimant further contended that on June 15 he called Respondent Troy Lowman to inform him that his account was "down the drain" and that he wanted out; however, Respondent Troy Lowman advised Claimant that Sentex Sensing was up over what he paid for whereby Respondent Troy Lowman suggested that he sell the stock. Claimant asserted that the next transaction was a buy of Crowley Financial not the sale of Sentex Sensing, and later Claimant received a confirmation from Hanifen, Imhoff with no sale of Sentex. Claimant further asserted that later Sentex was sold for 1/32 and he did not receive the check, at which time, Claimant was informed that Hanifen, Imhoff had applied the proceeds from the sale of Sentex shares but there still was a balance due of over \$800.00. Claimant further alleged that he lost money because of the failure to follow through with the sale of Sentex in a timely manner.

Respondents J.W. Gant & Associates, Inc. and Troy Lowman, by and through their counsel Kenneth F. Berg, Esq. of Fishman & Merrick, P.C., Chicago, Illinois, maintained that they followed Claimant Bernard W. Lifka's instructions in making trades but Claimant claimed to have suffered losses due to actions taken by Hanifen, Imhoff after his account was transferred there, thus the claim should be dismissed against Respondents. Respondents further maintained that Respondent J.W. Gant & Associates, Inc. ceased doing business on June 30, 1992, whereby Claimant was given written notice that his account would be transferred to Hanifen, Imhoff, unless he gave instructions to transfer it elsewhere. Respondents contended that the purchase of Crowley and the sale of Sentex were done according to Claimant's instructions; moreover, Claimant ratified and confirmed the transactions by not complaining about it when he learned of it.

RELIEF REQUESTED

Claimant Bernard W. Lifka requested \$3,275.00 in actual damages.

Respondents J.W. Gant & Associates, Inc. and Troy Lowman requested the claim be dismissed and they be awarded attorney's fees, including costs.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert R. Thomas, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 5, 1992, and not signed by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

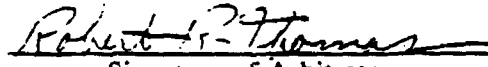
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.W. Gant & Associates, Inc. and Troy Lowman are jointly and severally liable and shall pay to the Claimant Bernard W. Lifka the sum of \$3,275.00 in damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Bernard W. Lifka shall be retained by the NASD, Inc.

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AFFIRMATION

I, **ROBERT R. THOMAS**, 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 24, 1993