

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Earl R. Crouch

93-00358

Name of Respondents

Brokers Exchange, Inc.  
John K. Zimmerman

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REPRESENTATION

For Claimant Earl R. Crouch ("Claimant"): Gerard J. Roerty, Jr., Esq. of the law firm of Mays & Valentine.

For Respondents Brokers Exchange, Inc. ("Brokers Exchange") and John K. Zimmerman ("Zimmerman"): Joseph Kaestner, Esq. and Brian R. Pitney, Esq. of the law firm of Kaestner & Associates.

CASE INFORMATION

Statement of Claim filed: February 1, 1993

Claimant's Submission Agreement signed on: January 29, 1993

Joint Statement of Answer filed by Respondents Brokers Exchange, Inc. and Zimmerman (collectively referred to as "Respondents") on: April 12, 1993

Zimmerman's Submission Agreement signed on: March 24, 1993

Brokers Exchange, Inc.'s Submission Agreement signed on: April 29, 1993

HEARING INFORMATION

Hearing Date/Sessions: December 21, 1993 - two sessions

Hearing Location: Omni Richmond Hotel, Richmond, Virginia

### CASE SUMMARY

This is a claim for losses incurred in specified options transactions entered into on Claimant's behalf by Brokers Exchange, through Zimmerman, the registered representative with whom Claimant dealt. Claimant, an elderly man with severe visual impairment, alleges that he never authorized any option transactions, that he never signed any options authorization-related documents on file with Respondents and that because of his visual impairment he did not learn of the subject transactions until months after the transactions were made. Claimant's theories of recovery alleged are breach of contract, fraud, conversion, and breach of fiduciary duty against both Respondents; and failure to supervise Zimmerman adequately against Respondent Brokers Exchange.

Respondents categorically denied all allegations of wrongdoing and specifically maintained that all trades were made on the instruction and authorization of the Claimant. Respondents maintained that Claimant was aware of all activity in his account and contacted Zimmerman on a daily basis. Respondents maintained that Claimant was aware of the options trading in his account and that these transactions were accounted for in Claimant's tax returns. Respondents maintained that there was no breach of contract, no breach of fiduciary duty, no conversion and no violation of the NASD or New York Stock Exchange rules and regulations.

### RELIEF REQUESTED

Claimant requested: Compensatory damages in the amount of \$23,197, plus interest thereon at the rate of 8%, punitive damages in the amount of \$25,000, plus costs and attorney's fees.

Respondents requested: that Claimant's claim be dismissed in its entirety and that Respondents be awarded all costs and attorneys fees incurred in defending against Claimant's claim.

### OTHER ISSUES CONSIDERED AND DECIDED

The Respondents' Motion to Dismiss the fraud, conversion and breach of fiduciary duty claims on statute of limitations grounds was held in abeyance until the conclusion of the hearing. The Panel's decision was reached on the merits of the case thereby rendering the motion moot.

Crouch Award  
Case No. 93-00358  
Page -3-

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claims for compensatory and punitive damages were denied in their entirety.
2. That the parties shall bear their own costs, attorney's fees and expenses, except as specifically provided for herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$400 = \$800 net due

Forum fees Assessed Against: That forum fees shall be split equally between the Claimant and Brokers Exchange so that each is assessed forum fees in the amount of \$400. Claimant, however, is entitled to offset his forum fees of \$400 with his previously filed hearing session deposit of \$400 so that no more fees are due from the Claimant. Brokerage Exchange is assessed forum fees in the amount of \$400.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature  
Name

Public/Industry

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Concurring Arbitrator's Signature  
Name

Public/Industry

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Thomas Adamson, IV