

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Peter F. Cheng

93-03224

Name of Respondents

Barrett Day Securities, Inc.
David Heredia

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 18, 1993, Claimant Peter F. Cheng, who appeared Pro Se, alleged that on March 2, 1993 he was astonished to receive a statement from Respondent Barrett Day Securities, Inc. showing that he bought 1,000 shares of National Health and Safety Corp. at which time Claimant called Respondent David Heredia to inquire about the unauthorized trade whereby Respondent David Heredia corrected the mistake. Claimant further alleged that on March 8, 1993, he received another statement from Respondent Barrett Day Securities, Inc. which claimed that he had sold 200 shares of Chase Manhattan PRG stock from his account, at which time, Claimant wrote a certified letter to Respondent Barrett Day Securities, Inc. to inform them that he did not sell the stock and that Respondent David Heredia acted on his own. Claimant contended that on March 18, 1993 he received another letter from Respondent Barrett Day Securities, Inc. stating that he had bought 200 shares of Chase Manhattan PRG stock, at which time Claimant called Respondent Barrett Day Securities, Inc. manager to speak about Respondent David Heredia's unauthorized trades. Claimant further contended that Respondent Barrett Day Securities, Inc. never corrected their mistake and instead on March 29, 1993, they sold 71 shares of his Chase Manhattan PRG stocks without his authorization. Claimant asserted that Respondent David Heredia's mishandling of his account and Respondent Barrett Day Securities, Inc. failure to correct the mistake, caused him to incur loss, thus, on July 13, 1993, Claimant transferred his account to Olde Discount Corporation.

Respondent David Heredia, who appeared Pro Se, maintained that in his four years as a broker, he never did an unauthorized transaction for any single one client nor does he intend to. Respondent further maintained that on January 28, 1993, he had solicited the account of

Claimant Peter F. Cheng, a lead he had been pursuing for quite some time, for the purchase of Chase Manhattan Bank preferred stock series G ("CMBPRG"), at which time, they agreed to open the account for 200 shares at \$29.00 per share with 50% discounted commission. Respondent contended that on February 26, 1993 he called Claimant to recommend the purchase of 1,000 shares of National Health & Safety, Inc. ("NHLT") at \$9.00 per share which he agreed to own whereby Claimant's order was to use the equity in the account, i.e. 200 shares of CMBPRG, to partially pay for National Health & Safety and that Claimant would send the difference of \$3,174.20 to cover the 1,000 shares of NHLT. Respondent further contended that apparently after speaking with Claimant on settlement date, he changed his mind about the trade and claimed he wanted his CMBPRG reinstated and his NHLT decreased to only 300 shares at \$9.00 per share. Respondent asserted that Claimant also claimed that just as soon as he gets the confirmations with both corrections, he would then mail a check for the debit amount of \$2,712.00 to cover 300 shares of NHLT whereby both corrections were made, i.e. on May 9, 1993, 1000 shares of NHLT was corrected to 300 shares and May 12, 1993 reinstated 200 shares of CMBPRG. Respondent further asserted that after receiving the corrected confirmations, Claimant claimed that he did not want to pay for the 300 shares of NHLT, so the trade was cancelled to avoid any problems whereby Respondent's Compliance Officer made him aware that the account did not have a W-9 Form signed by the Claimant and that 71 shares of CMBPRG were sold and the money withheld until a signed W-9 was submitted. Respondent further maintained that he called Claimant to advise him of the problem and told him to sign the form and mail it immediately to reverse the withheld amount totaling 71 shares of CMBPRG. Respondent further contended that before receiving the signed W-9 form, Claimant had tried to transfer the account to Stamford Company and the account was coded "no more business" hence frozen whereby soon thereafter the account was transferred. Respondent further contended that in conclusion, Claimant changed his mind after his orders were executed, then had Respondent make the corrections he requested after-the-fact whereby there were no unauthorized trades done in his account and all trades were cleared with Claimant.

Respondent Barrett Day Securities, Inc. failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Peter F. Cheng requested the sum of \$1,569.00 in actual damages.

Respondent David Heredia requested the claim be denied.

Respondent Barrett Day Securities, Inc. failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Barrett Day Securities, Inc. was served a copy of the Statement of Claim by regular mail on September 13, 1993 and given an opportunity to respond, which they failed to do. Respondent Barrett Day Securities, Inc. was notified on October 25, 1993, 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 October 25, 1993, evidencing their receipt of this correspondence.

Respondent Barrett Day Securities, Inc. failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Barrett Day Securities, Inc. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Leah G. Rabinowitz, 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 12, 1993, by the Respondent David Heredia on October 21, 1993 and not signed by the Respondent Barrett Day Securities, Inc. 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. The claim of Claimant Peter F. Cheng against Respondents Barrett Day Securities, Inc. and David Heredia 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 Peter F. Cheng shall be retained by the NASD, Inc.

AFFIRMATION

I, **LEAH G. RABINOWITZ**, 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.

Leah G. Rabinowitz

Signature of Arbitrator

DATE OF DECISION: January 24, 1994

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 11th day of JANUARY 1994, before me personally appeared Leah G. Rabinowitz to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

David M. Phillips

DAVID M. PHILLIPS
Notary Public, State of New York
No. 31-4614277
Qualified in New York County
Commission Expires April 30, 1995