

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Richard P. Dwyer III

93-04598

Name of Respondents

InterSecurities, Inc.

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on Nov. 2, 1993, Claimant Richard P. Dwyer III, who appeared Pro Se, alleged that on July 7, 1993, he directed his broker at Respondent InterSecurities, Inc. to sell 300 shares of Boeing Corporation stock, and to forward the proceeds of the sale directly to Claimant at his address. Claimant further alleged that he was informed by Respondent that he would receive the proceeds from the sale in about one week. Claimant contended that the proceeds from the sale should have been mailed out to him by July 29, 1993. Claimant further contended that he called Respondent on August 9, 1993 and was told by a representative of Respondent that the proceeds from the sale would be sent out that day, and that he did not receive the proceeds until August 11, 1993. Claimant alleged that he should be compensated for the gain in the stock price between the day the shares were sold and July 29, 1993, since Respondent has the right to cancel the purchase of a stock if the funds are not received within seven days, and charge the would-be purchaser for any loss in this period. Claimant further alleged that the rules going into the stock purchase which protect the brokerage firm should be used to protect him on the sale of the stock. As a result of the above, the Claimant contended he had suffered damages for which the Respondent should be held liable.

Respondent InterSecurities, Inc., through its representative Gordon E. Hippner, maintained that it never received instructions from Claimant on July 7, 1993 to

JUN 22 '94

sell 300 shares of Boeing Corporation stock or to make payment of subsequent proceeds. Respondent further maintained that on July 22, 1993 it received from Claimant instructions to sell 300 shares of Boeing Corporation stock at the prevailing market price, and to issue a check for proceeds on the settlement date. Respondent contended that it sold for Claimant's account 300 shares of Boeing Corporation at \$38 a share on July 22, 1993 for settlement on July 29, 1993. Respondent further contended that the proceeds of this sale were not issued to the Claimant on the settlement date but, rather, seven business days later on August 9, 1993 due to clerical oversight. Respondent maintained that during the period from the date of sale to August 9, 1993, the proceeds of the sale remained in Claimant's account and was at all times available for reinvestment. Respondent further maintained that subsequent to the date of the sale in question, Claimant was not the owner of 300 shares of Boeing Corporation stock, was not subject to market risk, and is not entitled to, or responsible for, market gains or losses after this date. Respondent contended that it met all of its contractual obligations to Claimant, and that due to the above it should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant requested \$337.50 in actual damages, plus \$30.00 in costs.

Respondent requested that the Claimant's Statement of Claim be dismissed in its entirety.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, William J. Landers, 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 October 18, 1993 and not by the Respondent as required by Sections 12 and 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. Claimant Richard P. Dwyer III's claims against Respondent InterSecurities, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.

Page Three  
Award 93-04598

3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **WILLIAM J. LANDERS, ESQ.**, do hereby affirm upon my oath of 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:** June 27, 1994