

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ralph A. and Phyllis A. Ferguson JTWROS

93-05065

Name of Respondent(s)

Herman Epstein
William Brito
Investors Associates, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 7, 1993, Claimants Ralph A. and Phyllis A. Ferguson, who appeared Pro Se, alleged that Respondent Investors Associates, Inc., through its account executive, William Brito, made an unauthorized trade in their account by purchasing 1,000 shares of MTC Electronics stock at 13 3/4 per share, when a buy order was placed for 13 5/8. The Claimants further alleged that, although they were assured the trade would be cancelled, and received a "trade cancellation" confirmation, they later received a confirmation stating the shares had been bought at 13 5/8, which they returned with a cover letter explaining the trade was cancelled. The Claimants contended that on October 8, 1993, they received a letter from Respondent Herman Epstein indicating that the account would be closed and that the MTC Electronics stock was sold at a loss to the Claimants.

Respondents Investor Associates, Inc., Herman Epstein and William Brito, through their representative and outside counsel, Lawrence Gelber, Esq., Beigel, Schy, Lasky, Rifkind, Goldberg, Fertik & Gelber, New York, NY, maintained that the Claimants admit an order was placed to buy 1,000 shares of MTC Electronics at 13 5/8, and further that an erroneous confirmation was sent to the Claimants indicating the stock had been purchased at 13 3/4. The Respondents further maintained that a correcting slip was sent to the Claimants reflecting the correct purchase price, but that Claimants reneged on their obligation and refused to pay for a trade that was ordered by them, and therefore the claims against them should be dismissed.

RELIEF REQUESTED

Claimants Ralph A. and Phyllis A. Ferguson requested \$3,880.07 in actual damages.

Respondents Investors Associates Inc., William Brito and Herman Epstein requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stephen M. Gelber, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on December 2, 1993, by Respondent Herman Epstein on January 11, 1994, but not signed by Respondents Investors Associates Inc. or William Brito 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. Respondents Investors Associates Inc., William Brito and Herman Epstein are jointly and severally liable and shall pay to Claimants Ralph A. and Phyllis A. Ferguson \$3,880.07 in actual damages.
2. Respondents Investors Associates Inc., William Brito and Herman Epstein are jointly and severally liable and shall pay to Claimants Ralph A. and Phyllis A. Ferguson simple interest at the rate of 10% per annum from the date of this award to the date of payment, pursuant to Haw. Rev. Stat. Section 478-3.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Investors Associates Inc., William Brito and Herman Epstein are jointly and severally liable and shall pay to the Claimants \$125.00 as reimbursement of the filing fee.

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AFFIRMATION

STATE OF HAWAII

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SS:

CITY AND
COUNTY OF HONOLULU

I, Stephen M. Gelber, 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: January 18, 1996