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9412072

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Muhua Yu

vs.

Case #
93-05105

Name of Respondents

Investors Associates, Inc.

Nick Hua

REPRESENTATION

Claimant, Muhua Yu, represented herself at the hearing.

For Respondents, Investor's Associates, Inc., Lawrence R. Gelber, Esq. from the law firm of Beigel Schy Lasky Cohen Rifkind et al. located in New York, New York.

For Respondent, Nick Hua, Gerald Marcus, Esq. located in Handen, Connecticut.

CASE INFORMATION

Statement of Claim was filed by Claimant on December 9, 1993.
Claimant's Submission Agreement was signed on December 3, 1993.

Statement of Answer and Motion to Dismiss was filed by Respondent, Investor's Associates, Inc., on March 23, 1994
Respondent's Submission Agreement was signed on February 17, 1994.

Statement of Answer and Cross Claim was filed by Respondent, Nick Hua, on October 17, 1994.
Respondent's Submission Agreement was signed on April 5, 1994.

9412072

HEARING INFORMATION

Hearing Date/Sessions: November 11, 1994 - 2 sessions.

Hearing Location: NASD's Offices located in New York, New York.

CASE SUMMARY

Claimant Ms. Yu commenced this action and sought damages as a result of losses sustained due to respondent Nick Hua's misrepresentation of facts and unauthorized trades concerning Lifchults Industries ("LIFF"), Chamber Development ("CDVA") and Advanced Micro Device ("AMD").

Respondents Mr. Hua and Investors denied the allegations of wrongdoing and denied liability for the losses claimant sustained.

RELIEF REQUESTED

Claimant requested an award of \$13,000.

Respondents requested a dismissal of all claims.

ARBITRATOR'S DECISION

A. INTRODUCTION

This matter was heard on November 11, 1994, at the NASD, 33 Whitehall Street, New York, New York. The hearing commenced at about 9:30 a.m. and concluded at about 4:00 p.m. The proceedings were tape-recorded. Evidence was received. The exhibits received in evidence were Arbitrator's Exhibit 1 (consisting of the pleadings submitted by the parties to the NASD with exhibits attached thereto, including letters, account statements and trading slips), C-1 (letter dated June 15, 1993 from claimant to Investors Associates), C-2 (letter from Ruth Brooks of the NASD to claimant), RH-1 (letter from respondent Hua to Investors Associates), and RH-2 (certain account statements of claimant).

Further, testimony was presented by the parties of the following witnesses, claimant Yu, her (now) husband Steven Ma, Donna Silverman the branch manager for Investors Associates, Jennie Loo an employee of Investors Associates

9412072

and respondent Hua.

Claimant was pro se but was permitted the assistance of her husband, Steven Ma, in the presentation of her case. Respondent Investors Associates was represented by Lawrence Gelber, Esq. and respondent Hua was represented by Gerald Marcus, Esq.

At the outset, it should be noted that the quality of the representation was excellent and that the award in favor of claimant, as set forth below, is no reflection whatsoever on that representation; quite to the contrary, as is indicated by the calculation of damages.

That having been said, an award is entered in favor of claimant and against respondents, jointly and severally, in the sum of \$6,621.80, together with post-award interest as provided by law and filing fees. See Damages below. In all other respects, the claims of the parties are denied.

B. FINDINGS

The testimony I have heard, the documents I have reviewed, and my assessment of the credibility of the witnesses, leads me to make the findings set forth herein. I find as fact that claimant Yu testified truthfully and that respondent Hua did not testify truthfully.

Respondent Hua was a registered representative employed by Investors Associates. Respondents began their relationship, such as it was, with claimant Yu by a "cold call" made by Mr. Hua to Ms. Yu. In his initial cold call and the ones which followed, he made statements which may be characterized as misrepresentations. At all times, Mr. Hua knew that Ms. Yu was a person unsophisticated in securities transactions, having had no prior experience in securities. The misrepresentations made by Mr. Hua to Ms. Yu, including promises of a 30% return per year, were, under the circumstances here presented, more than mere "puffing." Rather, they were designed to cause Ms. Yu to open an account with and to engage in unsuitable transactions through respondents. These misrepresentations were if not knowingly then certainly recklessly made by Mr. Hua to Ms. Yu.

Never in his dealings with Ms. Yu did Mr. Hua properly or fully explain to Ms. Yu the risks attendant to selling short or selling short on margin. Never in his dealings with Ms. Yu did Mr. Hua explain the difference risks associated with transactions in over-the-counter stocks as compared to transactions in blue chips securities or in other alternative investments.

9412072

Mr. Hua made no (or nominal) effort to secure from Ms. Yu that information which was essential for Mr. Hua to be able to open for Ms. Yu an account whose goal was "speculation" - according to the customer form. Nor did Mr. Hua attempt to obtain from Ms. Yu accurate information regarding her net worth for the purpose of determining suitability. Rather, Mr. Hua chose to tell his supervisor at Investors Associate, Donna Silverman, that Ms. Yu had a net worth of \$100,000 and that the goal of the account was "speculation." I find that Donna Silverman was provided with such information by Mr. Hua. I further find that Mr. Hua lied at the arbitration hearing in disclaiming knowledge with respect to the source of the net worth information of \$100,000 set forth in the customer form. In fact, as Ms. Yu testified, her net worth at the time the account was opened was \$15,000.

The facts set forth above may warrant further investigation by the NASD of Mr. Hua. In this regard, the letter of Ruth Brooks to claimant Yu dated July 28, 1994 (part of Arbitrator's Exhibit 1) is no bar to further regulatory proceedings. As Ms. Brooks specifically stated, at that time, the evidence was "not sufficiently clear to establish a violation of securities regulations and warrant disciplinary action." At this time, however, the evidence is clear to warrant further investigation by the NASD of Mr. Hua.

No form was ever signed by Ms. Yu verifying a net work of \$100,000 or an account goal of "speculation." According to Donna Silverman, Mr. Hua followed all procedures of Investors Associates in connection with his opening of an handling the Yu account. Consequently, the ability of Mr. Hua to engage in the conduct in which he engaged vis a vis Ms. Yu raises serious questions with respect to the adequacy of the controls in place at Investors Associates to detect such conduct.

Furthermore, according to the record, there was no effort undertaken by anyone at Investors Associates, Donna Silverman or otherwise, to verify the information set forth on the unsigned customer form. Had any attempt to verify been made - had a supervisor simply telephoned Ms. Yu - the deception engaged in by Mr. Hua immediately would have been discovered by Investor Associates, prior to any losses being sustained in her account.

Mr. Hua's efforts to dissuade Ms. Yu from taking corrective action with respect to transactions in her account, by promising her that he would "make all her money back in two days," is further evidence of a continuing pattern of deception by Mr. Hua with respect to Ms. Yu.

The foregoing are not the only examples of Mr. Hua's attempt to deceive.

9412072

During his direct testimony, the testified that he had not been involved in any prior arbitration. It was not revealed until later in the arbitration that there were pending complaints arising out of his alleged activities on behalf of Investors Associates. This "half truth" direct testimony is further indication to this arbitrator that the misrepresentations engaged in by Mr. Hua - exemplified by his conduct towards Ms. Yu - continue to date.

To her credit, Donna Silverman admitted that had she known that the net worth of Ms. Yu was in fact \$15,000, she would have been of the view that the transaction LIFF was speculative and unsatiable for claimant. See further discussion regarding LIFF below.

I find that a short transaction and a short transaction on margin for this investor would have been unsuitable. I find that but for the misrepresentations engaged in by Mr. Hua, Ms. Yu would not have opened an account with respondents, nor engaged in transactions through respondents.

Respondents' efforts to develop at the arbitration that claimant Yu understood the concept of "risk" in a very general sense does not by any stretch of the imagination relieve either respondent from their obligations under the securities laws with respect to "suitability"; nor does the same relieve them of their responsibilities to act properly, fairly and above board with claimant.

Investors Associates is jointly and severally liable to claimant, together with Mr. Hua, on the theories of respondent superior and by reasons of its "control person" responsibilities under the 1934 Act.

(i) LIFF:

The testimony is clear that respondents purchased for claimant's account 10,000 shares of LIFF at \$.45 per share. The testimony is clear that Jennie Loo, respondent's employee, advised claimant to sell the security at \$.25 per share. Claimant's failure to do so at that point (while perhaps understandable from the standpoint of human nature) forecloses claimant from recovery for any further decline in the price of that security below \$.25 per share. Consequently, damages sustained by claimant on LIFF are limited to \$2,000 (10,000 shares x \$.20 per share).

(ii) CDVA:

The testimony is clear that the sale of Mr. Yu's position in CDVA at less than \$6 per share was an unauthorized action. Mr. Hua's claim that he was

9412072

trying to mitigate Ms. Yu's loss rings hollow when one considers the fact that she had given him specific instruction to the contrary and that he had not taken adequate steps to try to notify her before disregarding her directions. More importantly, from the regulatory perspective, Mr. Hua falsely filled out the sale ticket as a "solicited" trade when, in fact, it was not. He further falsified the sale ticket by striking \$6 per share and writing in the actual sales price of \$4-5/16. The sale ticket in question is part of Arbitrator's Exhibit 1.

Further, there was testimony presented by respondents that CVDA rose back up to a price of \$6 per share about 10 months after the unauthorized sale by Mr. Hua. Therefore, had Mr. Hua followed Ms. Yu's instruction, she may have been able to sell her shares at the minimum price of \$6 as she intended to do. Mr. Hua's unauthorized conduct deprived her of this opportunity.

The markings on the sale ticket should have alerted Mr. Hua's supervisor at Investors Associates and should have caused a supervisor at Investors Associates to contact the claimant.

On this record, I cannot find that the initial purchase by respondents on behalf of claimant of CDVA was inherently unsuitable for this client. The evidence presented indicates that the price decline (from \$9-3/4) was the result of the company's having provided false financial data to others. Consequently, liability with respect to the CDVA transaction is limited to the difference between the price of \$6 and the price of \$4-5/16 directly attributable to the unauthorized sale by respondents.

(iii) AMD:

The short transaction in AMD was unsuitable for this claimant and the entire loss on that transaction is attributable to respondents' misconduct.

(iv) CLAIMANT'S NET LOSS:

The testimony of claimant Yu and Steven Ma establish that claimant has taken and will continue to take as tax losses the losses sustained in the transactions which are the subject of this proceeding. Claimant further acknowledges that she is in a 28% bracket. Thus, damages to be awarded to claimant will be reduced by 28% to reflect the net loss to claimant.

C. DAMAGES

In summary, the damages awarded to claimant Yu are as follows:

9412072

1. \$2,000.00 on the LIFF transaction (the price decline from \$.45 per share to \$.25 per share);
2. \$1,688.00 to claimant bases upon the unauthorized sale of CDVA (the difference between selling at \$6 and at \$4-5/16);
3. \$5,508.94 for losses sustained on the unsuitable AMD transaction, as reflected in the account statement;
4. Less 28% or \$2,575.14 (the tax benefits to be enjoyed by claimant on the said losses);
5. Totalling \$6,621.80;
6. Plus 5% as pre-award interest from October 1, 1992 to the date of this award;
7. Plus such additional interest as may be determined, consistent with 28 U.S.C. Sec. 1961, as a measure of post-award interest;
8. Plus filing fees which claimant paid to the NASD as listed in the Forum Fees section of this decision;
9. The entire award, as aforesaid, is rendered in favor of claimant and against respondents jointly and severally; and

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

Prior to the commencement of the hearing, respondent Hua sought a waiver of the filing fees due in connection with his Crossclaim. The NASD granted a waiver of the fees at the conclusion of the hearing on claimant's case and indicated that this arbitrator still had the authority to assess respondent Hua these fees. Both respondents subsequently settled their dispute and the Crossclaim was not heard. Under the circumstances, this arbitrator waives the assessment of the \$500 non-refundable filing fees against respondent Hua.

9412072

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed against respondent Mr. Hua and Investors Associates:

Non-refundable Filing Fee:	\$100.00
Hearing Session Fee:	600.00 (\$300 x 2 hearing sessions)
Total Fees:	\$700.00

1. Claimant previously paid \$400.00 and is entitled to a refund of that amount by Respondents pursuant to paragraph 8 of this decision. Respondents shall remit the balance, \$300, to the NASD.

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

Sole Public Arbitrator's Signature


Sheldon M. Finkelstein, Esq.

Date of Decision: December 30, 1994

9412072

STATE OF New Jersey s.s:
COUNTY OF Essex

On this 30th day of December, 1994, before me personally appeared Sheldon M. Pinkelstein known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Kimberly D. Bruno

KIMBERLY D. BRUNO
A Notary Public of New Jersey
County of Morris
My Commission Expires 2/8/99