

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James Sobotta and Thu Sobotta

94-00929

Name of Respondents

Investex Securities Group, Inc.;
Frank J. Somma

REPRESENTATION

For Claimants: James Sobotta and Thu Sobotta ("Sobotta") were represented by David Hammer, Esq., located in Houston, Texas.

For Respondents: Investex Securities Group, Inc. ("Investex") and Frank J. Somma ("Somma") were represented by Frank J. Somma, Investex Securities Group, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: March 10, 1994

Claimants' Submission Agreement signed on: February 14, 1994

Statement of Answer filed by Respondents on: March 30, 1994.

Respondent Investex's Submission Agreement signed on: March 30, 1994 by Frank J. Somma, President, Investex Securities Group, Inc.

Respondent Somma's Submission Agreement signed: March 30, 1994.

Motion to Change Situs filed by Respondents on: July 26, 1994.

Response to Motion to Change Situs filed by Claimants on: July 27, 1994.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: September 20, 1994 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants alleged that Respondent Somma, while employed by or acting as an agent for Respondent Investex, failed to inform him of a reverse stock split resulting in Sobotta selling shares he did not own. The Statement of Claim alleged as follows:

1. On August 27, 1993, Sobotta called Somma and asked to sell his Glendale stock. 6000 shares were sold that date;
2. However, on August 26, 1994, there had been a 100 to 4 reverse stock split due to a reorganization and Sobotta owned only 240 shares of Glendale Federal Bank Shares valued at \$8.75 per share; and
3. Somma knew and/or was under a duty to know that there was no Glendale stock to be sold.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. On August 27, 1993, Sobotta called and requested that Respondents sell 6000 shares of GLN at 8 3/4 per share. The transaction was consummated that date;
2. On September 3, 1993, Sobotta's Glenfed stock was exchanged for Glendale Federal Bank at the exchange rate of .04 share of Glendale for each share of Glenfed plus 1320 rights. The New York Stock Exchange utilized the identical symbol of GLN after the exchange;
3. When Sobotta could not deliver 5760 shares of Glendale Fed Savings Bank, Respondents were obligated to purchase these securities for Sobotta's account and liquidate 1320 Glendale rights in order to eliminate the short position and unsecured balance in his account;

4. Sobotta was informed of these actions immediately after Respondents were advised of the deficit by their clearing house; and

5. On August 26, 1993, Glenfed (GLN) closed at 1/2 per share. On August 27, 1993, Glendale Federal Bank (GLN) opened at 9 1/8 per share.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents in the sum of \$2,200.00 in actual damages, plus attorneys' fees and costs.

Respondents requested that the Statement of Claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

On August 15, 1994, the Arbitrator determined that Respondents' Motion to Change Situs would be denied.

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

AWARD

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

1. Respondents Investex Securities Group, Inc. and Frank J. Somma are jointly and severally liable for and shall pay to Claimants James Sobotta and Thu Sobotta the sum of \$2,200.00 as actual damages;
2. In addition, Respondents Investex Securities Group, Inc. and Frank J. Somma are jointly and severally liable for and shall pay to Claimants James Sobotta and Thu Sobotta the sum of \$880.00 as attorneys' fees. In deciding to award attorneys' fees, the Arbitrator considered the arguments of the parties, as well as the provisions of the Texas Deceptive Trade Practices Act and the award of attorneys'

fees based upon contractual breach, and determined that authority existed for an award of attorneys' fees to the Claimants;

3. All remaining costs of arbitration shall be borne by the party incurring the cost, except for those specifically enumerated herein;

4. Any request for relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$25.00 per session = \$25.00.

The National Association of Securities Dealers, Inc. shall retain the \$25.00 claim filing fee and the \$25.00 hearing sessions deposit previously deposited by the Claimants, James Sobotta and Thu Sobotta. Respondents Investex Securities Group, Inc. and Frank J. Somma are jointly and severally liable for and shall pay to Claimants James Sobotta and Thu Sobotta the sum of \$50.00 as reimbursement of the fees paid by Claimants.

Concurring Arbitrator's Signature

Name

Date

s/s Charles D. Powell, Esq.
Charles D. Powell, Esq.
Public Arbitrator

November 14, 1994

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Date of Service of Award: November 15, 1994