

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Edward and Diane Loeb

94-01302

Name of Respondent(s)

John Hurley
Thomas James Associates, Inc.

CASE SUMMARY

In a claim filed with National Association of Securities Dealers, Inc. on April 6, 1994, Claimants, Edward and Diane Loeb, who appeared Pro Se, alleged that Respondents, John Hurley and Thomas James Associates, canceled his transaction to buy 1500 shares of XLIC "because the check was lost in transit." Claimant further alleged that Respondents assessment of \$2,280.00 against him in costs for selling out Claimants XLIC position was simply retribution for Claimant's decision to close his brokerage account with Respondents. Claimant contended that Respondents effectively waived all charges for selling out Claimants position in XLIC. Claimant further contended that a \$200.00 penalty should be assessed against Respondents for failing to send his EXCEL stock certificates upon his requests, and further that as a result of the Respondents' wrongdoing, Claimants have suffered damages for which Respondents should be held liable.

Respondents, John Hurley and Thomas James Associates, through their in-house counsel, Richard J. Milham, Jr., Esq., maintained that their sellout of Claimants XLIC trade was mandated by Regulation T of the rules of the securities industry. Respondents further maintained that no matter what the cause of Claimant's failure to deliver payment, the delinquent status of his account required Respondent to sell out his position in accordance with Regulation T. Respondents contended that Claimant is responsible for the resulting loss from his XLIC trade, and also that the Claimant's demand for delivery of his EXCEL stock certificates is moot, since Respondent's clearing firm has already been instructed to deliver the certificates to Claimant, and further that the \$200.00 penalty is not appropriate. The Respondents contended that no wrongdoing was committed, and therefore, they should not be held liable in this matter.

RELIEF REQUESTED

Claimants, Edward and Diane Loeb, requested compensation, damages in the amount of \$4,950.00, transmission of stock certificate for 3000 shares of EXCEL, and a \$200.00 penalty against Respondent for retaining the EXCEL stock certificates.

Respondents, John Hurley and Thomas James Associates, requested that Claimants claims be dismissed, and requested all costs, plus \$2,000.00 in attorneys' fees incurred in defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent's Motion To Preclude further submissions dated March 12, 1995 was reviewed and considered by the arbitrator. This motion was denied and all submissions were reviewed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph A. Kenary, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 28, 1994, and by the Respondents on August 31, 1994,

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 claims of Claimants Edward and Diane Loeb against Respondents John Hurley and Thomas James Associates are dismissed in their entirety.
2. The parties shall bear their respective costs and attorneys' fees.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc.. by the Claimants, Edward and Diane Loeb, shall be retained by NASD, Inc.

Affirmation

STATE OF MARYLAND

} SS:

COUNTY OF MONTGOMERY

I, JOSEPH KENARY, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: July 11, 1995