

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mi-er Shiau

94-02019

Names of Respondents

Investors Associates, Inc.  
Nick Hua

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**REPRESENTATION**

For Claimant Mi-er Shiau ("Claimant") appeared Jih-Kuei Chang, Esq., a sole practitioner located in Flushing, New York.

For Respondent Investors Associates, Inc. ("Investors Associates") appeared Lawrence R. Gelber, Esq., from the law firm of Beigel Schy Lasky Rifkind Goldberg Fertik & Gelber located in New York, New York.

For Respondent Nick Hua ("Hua") appeared Gerald E. Marcus, Esq., a sole practitioner located in Hamden, Connecticut.

**CASE INFORMATION**

Statement of Claim filed: May 31, 1994.

Claimant's Submission Agreement signed on: July 20, 1994.

Statement of Answer filed by Respondent Investors Associates: August 30, 1994.

Respondent Investors Associates' Submission Agreement signed on: October 11, 1994.

Statement of Answer filed by Respondent Hua: September 16, 1994.

Respondent Hua's Submission Agreement signed on: September 8, 1994.

## **HEARING INFORMATION**

Hearing Dates/Sessions:

June 1, 1995

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Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers located in New York, New York.

## **CASE SUMMARY**

Claimant alleged that, in August 1992, she opened an account with Respondent Investors Associates and that Respondent Hua was her broker. Claimant further alleged that at the time she opened this account she resided in Bayside, New York. Claimant asserted that, in October 1992, she closed her account because Respondent Hua made unauthorized trades and churned her account. Claimant further asserted that, in January 1993, she decided to give Respondent Hua another chance and so she opened a new account. Claimant alleged that at the time she opened the second account she resided in New Hyde Park, New York.

Claimant alleged that in, July 1993, Respondent Hua told her to sell 3300 shares of Modame Co. and to send him \$7,500.00 in order to buy 2000 shares of Copytele Inc. Claimant further alleged that she usually paid for a transactions after she received a confirmation, but that she never received a confirmation for the purchase of Copytele Inc. Claimant also alleged that, on July 12, she sent Respondent a check for \$7,500.00 because Respondent Hua threatened that the firm would sell her stock if she didn't send the money.

Claimant alleged that she never received any confirmations or statements during the period of July 12, 1993 through March 1994. Claimant further alleged that, upon preparing her 1993 tax return, she spoke to someone in Respondent Investors Associates' complaint office and asked him to forward all the account confirmations to her. Claimant further alleged that the confirmations showed that Respondent Hua transferred money and stocks to her prior account without authorization and that because the address on the old account was different she was never informed of any trade made by Respondent Hua.

Respondent Investors Associates denied all allegations of wrongdoing set forth in the Statement of Claim. As affirmative defenses, Investors Associates maintained that the Statement of Claim failed to state a claim upon which relief may be granted; that it properly executed the orders placed by Claimant; that Claimant assumed the risk of her investments; that Claimant failed to mitigate her damages; that Claimant ratified each transaction; that the claims are barred by the doctrines of estoppel and waiver; and that, at all times, it acted in good faith and accordance with the laws, rules and regulations governing the securities industry.

Respondent Hua denied all allegations of impropriety contained in the Statement of Claim and denied any liability to Claimant for monetary damages. Respondent Hua further maintained that upon information and belief that all trade confirmations were received by Claimant at her Bayside, New York address and that Claimant still owned the property and had access to all mail delivered to that address.

Respondent Hua maintained that he informed Claimant, on or about July 12, 1993, that the margin due for the shares of Copytele, Inc. was due promptly. Respondent further maintained that the first time Claimant complained that she did not receive trade confirmations he personally sent Claimant copies of the trade confirmations for the purchases of Copytele, Inc. to the New Hyde Park, New York address that Claimant provided to him. Respondent Hua also maintained that, on July 20, 1993 Respondent Investors Associates liquidated the shares of Copytele in Claimant's account and that no payment was received from Claimant until on or about August 5, 1993.

Respondent Hua maintained that Claimant was fully aware of her purchases and the risks associated with buying the securities she bought. Respondent Hua further asserted that Claimant failed to inform Respondents that she would not receive trade confirmations at the Bayside, New York address. Respondent Hua further maintained that confirmations were sent to all addresses provided by Claimant.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$30,500.00.

Respondent Investors Associates requested that the claims against it be dismissed in their entirety and that it be awarded costs, fees and expenses, including reasonable attorneys' fees in the amount of \$5,000.00, all forum and arbitrator fees and such other and further relief deemed just and proper.

Respondent Hua requested that the Statement of Claim be dismissed in its entirety and that the costs of the proceeding, including his legal fees, be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies 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 originals remain on file with the NASD.

### **AWARD**

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

1. All claims against Respondents Investors Associates and Hua be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs, including attorneys' fees.
3. All other claims be and hereby are denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:


2 sessions x \$400.00	= \$800.00
minus hearing session deposit	= <u>\$400.00</u>
Total outstanding forum fees	= \$400.00

Claimant be and hereby is liable and shall pay to the NASD the sum of \$400.00, representing the total amount of outstanding forum fees.

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

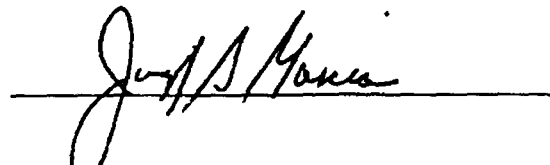
**ARBITRATORS' SIGNATURES**

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W. Charles Robinson, Esq.  
Public Chairperson

  
\_\_\_\_\_  
Joseph S. Mascia  
Public Arbitrator

\_\_\_\_\_  
Walter A. Kapuscinski  
Industry Arbitrator

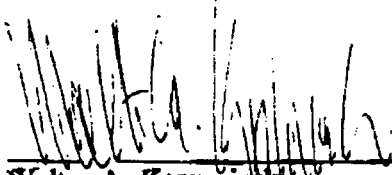
I, Joseph S. Mascia, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above-captioned matter.

  
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Date of Decision: July 27, 1995

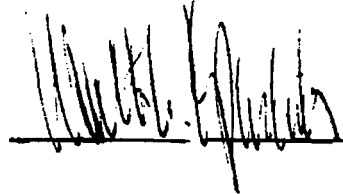
**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
W. Charles Robinson, Esq.  
Public Chairperson

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Joseph S. Mascia  
Public Arbitrator


  
\_\_\_\_\_  
Walter A. Kapuscinski  
Industry Arbitrator

I, Walter A. Kapuscinski, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above-captioned matter

  
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Date of Decision: July 27, 1995

**ARBITRATORS' SIGNATURES**




W. Charles Robinson, Esq.  
Public Chairperson

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Joseph S. Mascia  
Public Arbitrator

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Walter A. Kapuscinski  
Industry Arbitrator

I, W. Charles Robinson, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above-captioned matter.



Date of Decision: July 27, 1995