

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Kenneth E. and Thelma E. Carpenter

94-02264

Name of Respondents

Robert A. Breed
Martin Arias
William Badinelli

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 15, 1994, Claimants Kenneth E. and Thelma E. Carpenter, who appeared Pro Se, alleged that Respondents Robert A. Breed ("Breed"), Martin Arias ("Arias"), and William Badinelli ("Badinelli") are responsible for an unauthorized transaction in their account. Claimants further alleged that they opened an account with D.H. Blair on July 15, 1993 with the purchase of 100 shares of Telepad Corp. at 5 1/4. Claimants contended that between July 1993 and January 1994 they received numerous "high pressure" calls from Respondent Breed to buy various stocks and refused each time. Claimants further contended that in early January 1994 Respondent Breed wanted them to buy 2,000 shares of Advanced Mammography Systems but they refused, and Respondent Breed then went ahead and purchased these 2,000 shares without authorization on January 7, 1994 for a total of \$20,752.50 and then sold the same on January 18, 1994 for \$19,372.50, again without authorization. Claimants alleged that on January 18, 1994, Respondent Breed also sold the 100 shares of Telepad Corp. at 9 1/2 for a total of \$922.50. Claimants further alleged that D.H. Blair's two compliance officers, Respondents Arias and Badinelli, refused to take any corrective action. As a result of the above, Claimants contended that they have suffered damages for which the Respondents should be held liable.

Respondent Martin Arias, who appeared Pro Se, maintained that there are no allegations of wrongdoing against him in the Claimant's Statement of Claim. Respondent Arias further maintained that he received a copy of Claimant's complaint concerning the transactions of Respondent Breed but was not involved in the review of the complaint. As a result of the above, Respondent contended that he should not be held liable in this matter.

Respondent William Badinelli, through his representative, Howard Wynn, Esq., maintained that a review of the Statement of Claim reveals that there are no allegations of wrongdoing or any claims of any sort against him and any references to him are peripheral. As a result of the above, Respondent contended that he should not be held liable in this matter.

Respondent Robert A. Breed, who appeared Pro Se, maintained that on January 7, 1994 Claimants advised him that they were in the financial position to purchase 2,000 shares of Advanced Mammography Systems at 10 3/8 without affecting their cash flow, and, at their direction, he placed an order for the purchase of 2,000 shares. Respondent Breed further maintained that in accordance with D.H. Blair's standard operating procedure, a purchase confirmation was sent to Claimants within 3 days of the order and two telephone calls were made to Claimants to confirm that their payment was sent in, but there was no answer. Respondent Breed contended that approximately eleven days after the order was placed and seven days after the confirmation was sent, the 2,000 shares were sold at 9 1/4 to cover the shortfall when no payment was received. Respondent Breed further contended that Claimants waited at least two and one-half weeks before returning his calls and alleging that the transaction was unauthorized. Respondent Breed maintained that, given the rules and regulations which govern the purchase, sale and payment for stock, he had no alternative but to sell the stock in Claimants' account when they failed to pay for their purchase. As a result of the above, Respondent contended that he should not be held liable in this matter.

RELIEF REQUESTED

Claimants Kenneth E. and Thelma E. Carpenter requested \$922.50 in actual damages, or the receipt of 100 shares of Telepad Corp.

Respondent Robert A. Breed requested that the claims of the Claimants be dismissed in their entirety.

Respondent William Badinelli requested that the claims of the Claimants be dismissed in their entirety and that he be awarded his costs.

Respondent Martin Arias requested that the claims of the Claimants be dismissed in their entirety and that he be awarded his costs.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered the Motions to Dismiss submitted by Respondents Martin Arias and William Badinelli, and all related documents. The Motions to Dismiss are denied.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Carmen Gross, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 9, 1994, by Respondent Robert A. Breed on August 22, 1994, by Respondent William Badinelli on July 27, 1994 and by Respondent Martin Arias on August 3, 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. Respondent Robert A. Breed is liable and shall pay to Claimants Kenneth E. and Thelma E. Carpenter \$922.50 in actual damages.
2. Respondent Robert A. Breed is liable and shall pay to Claimants Kenneth E. and Thelma E. Carpenter simple interest at the rate of 12% per annum from January 25, 1994 to the date of the Award.
3. The claims of the Claimants Kenneth E. and Thelma E. Carpenter against Respondents Martin Arias and William Badinelli are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Robert A. Breed is liable and shall pay to Claimants Kenneth E. and Thelma E. Carpenter \$30.00 as reimbursement of the filing fee.

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AFFIRMATION

I, **CARMEN A. GROSS**, 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: March 14, 1995