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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Irving M., Hatties P. & Ellis P. Hyman

95-00121

Name of Respondent(s)

Scott Waterbury

REPRESENTATION

Claimants, Irving M, Hatties P. and Ellis P. Hyman ("the Hymans") were pro se.

For Respondent, Scott Waterbury ("Waterbury"): Nicholas Chohey, Esq. of Quick & Reilly, New York, New York.

CASE INFORMATION

Statement of Claim filed: January 9, 1995. Claimants' Submission Agreement signed on: January 31, 1995.

Statement of Answer filed by Respondent on: April 29, 1995. Respondent's Submission Agreement signed on: February 16, 1995.

HEARING INFORMATION

On November 15, 1995 in Tampa, Florida, a hearing lasting one session was conducted.

CASE SUMMARY

Claimants, alleged that Respondent sold 35 Commonwealth Edison bonds out of the account without specific prior authorization which resulted in a loss. Claimant, Irving Hyman alleged that Waterbury misinterpreted his instructions which were given over the telephone.

Respondent alleged that: Quick and Reilly does not provide investment advice but only transacts buy and sell orders as instructed by the client; Claimants placed an order to sell \$35,000.00 face value of Commonwealth Edison bonds due 12/1/07 with an 8 1/4% coupon; the order was

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placed at a limit price of 92 1/8 with an "all or None" stipulation. Respondent alleged that, at the time the order was entered, the bonds were quoted with a bid of 92 1/8 and an offer of 94 3/8; the order was read back to the Claimant and Claimant confirmed all facts as correct; the Claimants order was filled at his limit price and was subsequently called and told that he had sold his bonds at a net price of 91 5/8 at which time the Claimant placed an order to purchase \$35,000.00 worth of Cleveland Electric bonds due 5/1/09 with an interest coupon of 9 1/4%; the order was placed at a limit price of 92 1/8 with an "All or None" stipulation. Respondent alleged that when Claimant was subsequently informed that the order had not been filled, he requested that his sale of the Commonwealth Edison bonds be cancelled and, upon being informed that he was bound to his sale order, the Claimant cancelled his purchase order.

#### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$743.75 which was later amended at the hearing to request an additional \$3,806.00 plus a further amount of \$1,444.00 plus punitive damages in the amount of \$100,000.00 and forum fees.

Respondent requested dismissal of the claim.

#### **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.

#### **AWARD**

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

1. Respondent is found not liable and, therefore, the claims against him are hereby dismissed.
2. Claimants' request for punitive damages is denied.

#### **OTHER COSTS**

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

NASD Case Number 95-00121

Award


Page - 3 -

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$100.00 (\$100.00 x one session).

1. Claimants are hereby assessed forum fees in the amount of \$100.00 for which the NASD shall retain the \$100.00 previously paid by Claimant in full satisfaction of such forum fees.
2. The NASD shall retain the \$50.00 nonrefundable filing fee previously paid by Claimants.
3. The NASD shall refund to Claimants the \$15.00 overpayment made by Claimants.

Arbitrator's Signature  
Name

  
Herbert L. Blume

Public/Industry

Public/Chairman ✓

Date of Decision:

January 23, 1996