

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Anouar Bensouda

95-00424

Name of Respondents

Rauscher Pierce Refsnes, Inc.  
Gary L. Donahue  
Beacon Securities, Inc.  
Farid Rashad

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**REPRESENTATION**

For Claimant appeared Benjamin J. Golub, Esq. of the firm Rogovin, Golub, Bernstein & Wexler, New York, NY.

For Respondent Rauscher Pierce Refsnes, Inc. appeared Will S. Montgomery, Esq. of the law firm Jenkins & Gilchrist, Dallas, TX.

Respondents Gary L. Donahue, Beacon Securities, Inc., and Farid Rashad did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on January 26, 1995. Claimant's Submission Agreement was signed on July 12, 1994.

The Statement of Answer and Motion to Dismiss was filed by Respondent Rauscher Pierce Refsnes on March 15, 1995. Respondent Rauscher Pierce Refsnes' Submission Agreement was signed on March 3, 1995.

The Statement of Answer was filed by Respondents Gary L. Donahue and Beacon Securities, Inc. on: April 13, 1995.

Respondents Gary L. Donahue and Beacon Securities, Inc. failed to sign a Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure.

Respondent Farid Rashad failed to file an Answer to the Statement of Claim and sign a Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Sessions: February 27, 1996 - Two Sessions

The hearing was held at the NASD, Inc.'s offices located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that he held an account with Respondent Beacon Securities, Inc. and that his account executive Respondent Farid Rashad made several unsuitable recommendations including recommending BCE Inc. ("BCE"), Future Communications, Inc. ("FCMI"), Big Boy Pacific ("BGBP"), Ferrera Foods ("FF") and a bond issued by Westinghouse. Claimant also alleged that Respondent Rashad made several unauthorized purchases in his account such as 200 shares of BCE; 3,100 shares of FCMI; 1,500 shares of BGBP; 3,500 shares of FF and a Westinghouse Bond; and that he made unauthorized sales 200 shares of BCE and the Westinghouse Bond. Claimant further alleged that he protested all the unauthorized transactions and instructed Respondent Rashad to sell the shares, but that Rashad assured Claimant that all the stocks would make money. Further, Claimant alleged that Respondent Rashad used threats that he would incur more debt for Claimant's account if he refused to help Rashad with his illegal activities which included opening fictitious accounts. Claimant also alleged that Respondent Rashad forced him to withdraw and borrow funds to deposit into Rashad's illegal accounts which were used to funnel money for his own personal gain. Claimant further alleged that Respondent Rauscher Pierce and Refsnes breached its duty to carefully oversee the completion of account opening documents and to oversee the proper and lawful trading of accounts. Claimant also alleged that Respondents Gary L. Donahue and Beacon Securities, Inc. failed to properly supervise Respondent Rashad and that they have failed to return his funds once he closed his account.

Respondent Rauscher Pierce and Refsnes, Inc. maintained that it is a clearing firm and that it has complied with its duties under the clearing agreements and the applicable rules of the national stock exchanges. Respondent Rauscher Pierce and Refsnes, Inc. also maintained that it did not have a direct relationship with Claimant and that it has no knowledge of any dealings between Claimant and Respondent Beacon. Respondent Rauscher Pierce and Refsnes, Inc. further maintained that it did nothing more than clear the trades for the broker that Claimant dealt with on his account.

Respondents Gary L. Donahue and Beacon Securities, Inc. maintained that the Statement of Claim failed to state a cause of action upon which relief may be granted. Respondents Gary L. Donahue and Beacon Securities, Inc. also maintained that they were never informed of any complaints that Claimant had arising out of his account. Respondents Gary L. Donahue and Beacon Securities, Inc. next maintained that they did not illegally open an account for Claimant nor engage in illegal trading activities.

Respondent Farid Rashad failed to file an Answer to the Statement of Claim.

**RELIEF REQUESTED**

Claimant requested damages in an amount not less than \$50,000.00, plus interest, punitive damages in the sum of \$1,000,000.00, reasonable attorneys' fees, costs and filing fees jointly and severally against all Respondents.

Respondent Rauscher Pierce Refsnes, Inc. requested a dismissal of the Statement of Claim, that Claimant take nothing and that it recover all its costs and attorneys' fees.

Respondents Gary L. Donahue and Beacon Securities, Inc. requested a dismissal of the Statement of Claim, that they recover all costs and expenses of this arbitration, and such other and further relief deemed just and proper.

Respondent Farid Rashad failed to file an Answer to the Statement of Claim.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The arbitrators made the following rulings concerning Respondents Gary L. Donahue, Beacon Securities, Inc. and Farid Rashad who failed to submit a Submission Agreement and/ or did not appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Beacon Securities, Inc. was a member of the NASD at the time this controversy arose and consequently the panel found jurisdiction over Beacon Securities, Inc.
3. The panel found that Gary L. Donahue and Farid Rashad were associated persons of a member of the NASD at the time this controversy arose and therefore, the panel found personal jurisdiction over Gary L. Donahue and Farid Rashad pursuant to section 12 of the Code.
4. In view of (2) and (3) above, the panel found that Beacon Securities, Inc., Gary L. Donahue and Farid Rashad were required to file with the NASD a properly executed Submission Agreement and/or a Statement of Answer pursuant to Section 25(b) of the NASD Code of Arbitration Procedure.
5. In accordance with Sections 21, 26 and 29 of the Code, the panel found that the NASD provided Gary L. Donahue, Beacon Securities, Inc. and Farid Rashad with due notice of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without Respondent Gary L. Donahue, Beacon Securities, Inc., and Farid Rashad, whose absences were unexcused.

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. Respondents Gary L. Donahue, Beacon Securities, Inc. and Farid Rashad be and hereby are jointly and severally liable and shall pay Claimant the sum of \$7,500.00, interest specifically excluded.
2. All claims against Respondent Rauscher Pierce and Refsnes, Inc. be and hereby are dismissed in their entirety. Respondent Rauscher Pierce and Refsnes, Inc.'s Motion to Dismiss be and hereby is granted.
3. Claimant's request for punitive damages be and hereby is denied.
4. Each party shall bear their respective costs.
5. All other claims are hereby denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fee:

2 Hearing Sessions x \$1,000.00 = \$2,000.00

The arbitrators have determined that the Claimant shall bear one-half of the cost of arbitration; the Respondent Rauscher Pierce Refsnes, Inc. shall bear one-half of the cost of arbitration.

The Claimant is liable and shall pay to the NASD the sum of \$1,000.00 less the hearing session deposit (\$1,000.00) = net \$0 due.

The Respondent Rauscher Pierce and Refsnes, Inc. is liable and shall pay to the NASD the sum of \$1,000.00.


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

Page Five  
Award #95-00424

**ARBITRATOR'S SIGNATURE**

Krishna M. Vempaty, Esq  
Public Arbitrator

Mary Jo Marchisello  
Public Arbitrator

  
Paul Barenholts  
Industry Arbitrator

I, Paul Barenholts, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
Paul Barenholts

NASD Date of Decision: April 22, 1996

Page Five  
Award #95-00424

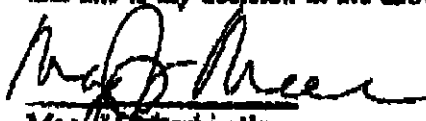
**ARBITRATOR'S SIGNATURE**

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Krishna M. Venupaty, Esq  
Public Arbitrator

  
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Mary Jo Marchisello  
Public Arbitrator

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Paul Barenholtz  
Industry Arbitrator

I, Mary Jo Marchisello, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules,  
that this is my decision in the above-captioned matter.

  
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Mary Jo Marchisello

NASD Date of Decision: April 22, 1996