

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Joseph G. Reynolds

vs.

Award No.  
95-00607

Name of Respondent

Waterhouse Securities Inc.

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**REPRESENTATION**

Claimant, Joseph G. Reynolds ("Claimant"), represented himself at the hearing.

For Respondent Waterhouse Securities Inc., ("Respondent"), Robert F.X. Bohrer First Vice President of Waterhouse Securities located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on February 6, 1995.

Claimant's Submission Agreement was signed on January 25, 1995.

Statement of Answer was filed by Respondent, Waterhouse Securities Inc. on June 15, 1995.  
Respondent did not execute a Submission Agreement.

**HEARING INFORMATION**

Hearing Date/Session: November 30, 1995 - 1 Session

Hearing Location: NASD offices located at 260 Franklin Street, Boston Massachusetts 02110.

**CASE SUMMARY**

Claimant alleges that he maintained an account with the Respondent and that on August 7, 1992, he placed an order to buy 1500 shares of Storage Technology Corp. common stock at a price of 33 1/4. Claimant states that as was his practice with the Respondent firm, he indicated that the order for was 1500 shares or none and that the order was good as a "day order only". Claimant further states that Respondent without authorization purchased 100 shares at 33 1/4 and later purchased an additional 1400 shares at 33 1/2. Claimant alleges that he immediately told Respondent that the order was improperly executed and that Respondent's employee told him that New York Stock Exchange halted the trading of

this stock which prevented them from executing the trade as instructed. Claimant also alleges that when the stock was re-opened for trading, it plunged and did not regain points and that as a result he sustained damages in the amount of \$14,900.00.

Respondent denies all substantive allegations of wrongdoing contained in the Statement of Claim and denies liability to Claimant. Respondent interposes four affirmative defenses and asserts a Counterclaim against Claimant for breach of contract.

Respondent contends that it does not offer investment advice to customers but is a mere order taker and that its employees are salaried and not commissioned. Respondent also contends that Claimant opened an account at its Boston office in or about March, 1990 and also executed a margin account. Respondent further contends that Claimant was an active, and sophisticated investor who traded in cash and on margin and heavily into options.

Respondent avers that Claimant's order was filled on the same day and that no extra commission was charged even the order though was executed in two lots, 100 shares at \$33 1/4 and 1,400 shares at 33 1/2. Respondent alleges that confirmations and statement were sent to Claimant in August, 1992 and that Claimant waited until October 12, 1992 to sell 200 shares at \$24 5/8 and the remaining shares in three lots and at lower prices. Respondent maintains that it has no record of a written or verbal complaint by Claimant during the two years Claimant allegedly spent trying to get Respondent to correct the mistake. Respondent also maintains that the first complaint it receive was in December 5, 1994, which Claimant filed in Boston Municipal Court. Respondent states that the legal fees incurred in defense of the matter, which was dismissed, is the basis of its Respondents Counterclaim. Respondent contends that Claimant is trying to shift the blame to he broker when he realizes that his is on the wrong side of the market.

#### **RELIEF REQUESTED**

Claimant requests an award of \$14,900.00.

Respondent requests that the Statement of Claim be dismissed and that it be awarded fees and expenses under its Counterclaim, \$3,198.70.

#### **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 pleadings, 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. All claims asserted by Claimant against Respondent are denied.
2. The request for damages in the counterclaim is also denied.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-Refundable Filing Fee	\$ 100.00
Non-refundable Counterclaim Filing Fee	\$ 500.00
Hearing Session Fee	\$ 400.00 (1 session @ \$400.00 per session)
Total Fees	<u>\$1000.00</u>

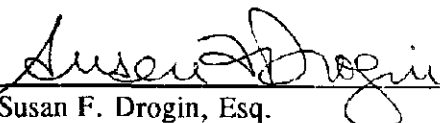
1. Claimant is assessed \$100.00 non-refundable filing fee. Claimant is further assessed \$200.00 in hearing session fees. Claimant previously paid \$100.00 and owes a balance of \$200.00.
2. Respondent is assessed \$500.00 non-refundable counterclaim. Respondent is further assessed \$200.00 in hearing session fees. Respondent previously paid \$500.00 and owes a balance of \$200.00.

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

**ARBITRATION PANEL**

William M. Prifti, Esq.	-	Public Chairperson
Susan F. Drogin, Esq.	-	Public Panelist
Lowell A. Warren, Jr.	-	Industry Panelist

Concurring Arbitrator's signature

  
Susan F. Drogin, Esq.

NASD's Date of Decision: January 17, 1996

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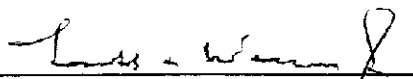
2. Respondent is assessed \$500.00 non-refundable counterclaim. Respondent is further assessed \$200.00 in hearing session fees. Respondent previously paid \$500.00 and owes a balance of \$200.00.

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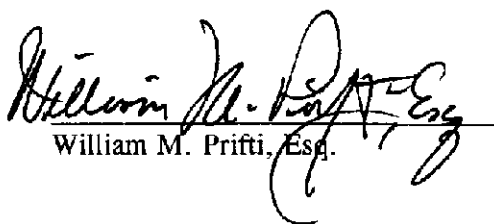
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