

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Robert T. Lempert

95-00906

Name of Respondent

John A. Dellamura

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 21, 1995, Claimant Robert T. Lempert ("Claimant"), who appeared Pro Se, alleged that Respondent John A. Dellamura ("Respondent"), on January 17, 1995 he instructed Respondent to sell the securities which he had in his account with Dean Witter Reynolds, Inc. Claimant further alleged that he had an commission agreement with Respondent of 5 cents per share that had been in effect for the last 14 transactions and which had been increased without prior notice on January 17, 1995. Claimant contended that Respondent told him the rate was increased because he may discontinue trading with him and he wanted his commission. Claimant further contended that upon Respondent's repeated recommendations he sold I.G. Corp stock and bought Davstar Industries LTD which resulted in losses, and as a result of the above, the Claimant has suffered damages for which the Respondent should be held liable.

Respondent John A. Dellamura, through his representative, Edward W. Larkin, Esq., in-house counsel at Dean Witter Reynolds, Inc., New York, NY, maintained that the Claimant demanded that the lowest possible commission be given to him or he would transfer his account, to which he agreed. Respondent further maintained that he made the low commission contingent upon the Claimant leaving the account assets with him at Dean Witter Reynolds, Inc. Respondent contended that the low rate was waived by the Claimant for the trades on January 17, 1995, because Claimant requested that he sell several securities and send him the check for the proceeds. Respondent contended that he knew very little about I.G. Corp and that Claimant was an experienced investor who traded that security on more than twenty occasions prior to his taking over the Claimant's account at Dean Witter Reynolds, Inc. Respondent further contended that as a result of the above, he should not be held liable.

**RELIEF REQUESTED**

Claimant Robert T. Lempert, requested \$7,291.52 in actual damages.

Respondent John A. Dellamura, requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Barbara Ash, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Robert T. Lempert, on February 8, 1995 and not by the Respondent John A. Dellamura, as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

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. The Respondent John A. Dellamura, is liable and shall pay to the Claimant Robert T. Lempert \$973.48 in actual damages
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robert T. Lempert, shall be retained by the NASD, Inc. The Respondent John A. Dellamura, is liable and shall pay to the Claimant Robert T. Lempert, \$75.00 as reimbursement of one-half of the filing fee.

**AFFIRMATION**

I, **BARBARA ASH, ESQ.**, 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.

  
\_\_\_\_\_  
Barbara Ash, Esq.

DATE OF DECISION: September 19, 1995