

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James K. Garland

95-00908

Name of Respondents

Edward A. McKay, Jr.
Bruce N. Barthold

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 22, 1995, Claimant James K. Garland, who appeared Pro Se, alleged that Respondents Edward A. McKay, Jr. ("McKay"), and Bruce N. Barthold ("Barthold"), improperly handled his inquiry into unauthorized trades made in his account maintained at Securities Planners, Inc ("SPI"). Claimant further alleged that McKay, a broker at SPI, sold him 1,000 shares of Lojack Corp. ("LC") on August 9, 1994, and that an unidentified broker from SPI attempted to sell him shares in Best Resources ("BR") about a week later but he refused the offer. Claimant contended that on September 12, 1994 he received a purchase confirmation for 1,000 shares of BR and a confirmation for the sale of his 1,000 shares of LC. Claimant further contended that he was unable to contact McKay and therefore, transferred his account to Commonwealth Associates which indicated that the 1,000 shares of BR had been sold on September 26, 1995, and on that same date 550 shares of BR had been purchased. Claimant alleged that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent Bruce N. Barthold, who appeared Pro Se, maintained that he was not an officer/director of SPI but was merely an employee whose responsibility included researching problems and offering resolutions with the assistance and instruction of Edward A. McKay, President. Respondent further maintained that he vaguely remembers the Claimant but before leaving SPI he fully informed McKay of all his files. Respondent contended that he told the Claimant that he would have to review the his call with the registered representative in order to get the facts which was office procedure. Respondent further contended that as a result of the above, he should not be held liable.

Respondent Edward A. McKay, Jr., through his representative, M. David Sayid, Esq., of Sayid and Associates, located in Hackensack, NJ, maintained that he was not the Claimant's broker and, moreover, he never had a conversation with the Claimant. Respondent further maintained that the account statement supports this contention because the registered representative number is not his. Respondent contended that the Claimant admitted he did not know his broker's name which he believes is irreconcilable with how an investor would behave towards his investment broker. Respondent further contended that the SPI has no record of him making telephone calls to the office about the unnamed broker, and that as a result of the above, he should not be held liable.

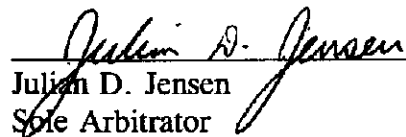
SPECIFIC FINDING

NASD ARBITRATION PROCEEDING

James K. Garland v. Edward A. McKay, et. al.
Arbitration No. 95-00908

The undersigned arbitrator who reviewed and ruled upon the above-captioned proceeding pursuant to a simplified arbitration procedure, has elected to attach to such ruling this simple explanatory finding of fact.

The arbitrator was unable to award any relief to the claimant, Mr. James K. Garland, in this proceeding, even though he believes that Mr. Garland has stated a prima facie case of unauthorized trading in his account. The problem with Mr. Garland's petition is it did not state a claim against any respondent joined in this proceeding.


Julian D. Jensen
Sole Arbitrator

RELIEF REQUESTED

Claimant James K. Garland, requested \$6,750.00 in actual damages.

Respondent Bruce N. Barthold, requested that the claims of the Claimant be dismissed.

Respondent Edward A. McKay, Jr., requested that the claims of the Claimant be dismissed.

AWARD

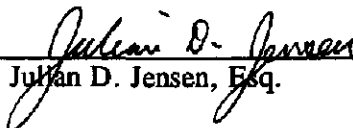
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Julian D. Jensen, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant James K. Garland, on February 15, 1995, and by the Respondent Edward A. McKay, Jr., on May 15, 1995, and not by the Respondent Bruce N. Barthold, 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 claims of the Claimant James K. Garland, against Respondents Edward A. McKay, Jr., and Bruce N. Barthold, are dismissed in their entirety.
2. All other relief requests are denied
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **JULIAN D. JENSEN, 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.



Julian D. Jensen, Esq.

DATE OF DECISION: October 25, 1995