

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David E. Brown

95-00974

Name of Respondents

Robert Todd Financial Corporation
John Carr

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1995, Claimant David E. Brown ("Claimant") who appeared Pro Se, alleged that in July 1994, he placed an order for 1000 shares of Interstate National Dealers Services, Inc. with Respondent John Carr ("Carr") a broker at Respondent Robert Todd Financial Corporation ("Robert Todd"). Claimant further alleged that the initial offering was priced at \$5 per unit with each unit comprised of one share and one warrant. Claimant also alleged that he purchased 1000 additional shares in October 1994 and 1000 in November 1994 after he was contacted by Carr. Claimant asserted that in December 1994 he received confirmation for 1000 additional shares which he had not authorized. Claimant further asserted that he sent written correspondence to Carr via Federal Express which instructed him to sell all the shares of stocks and warrants. Claimant also asserted that the letter was delivered to Robert Todd and signed for on December 5, 1994. Claimant contended that he left town, and on his return, sent a second letter to Robert Todd since he had not received confirmation of the sale.

Claimant further contended that he later received confirmation for the sale of the 1000 shares which were unauthorized. Claimant also contended that the shares were sold for less than the purchase price. Claimant alleged that Carr promised to make up the difference between the purchase and sale price. Claimant also alleged that Carr indicated that he had not received the two Federal Express requests to sell the shares and warrants hence the reason for his failure to sell. Claimant asserted that Carr indicated to him that Robert Todd was responsible for him not receiving the letters and would make up the difference in the near future. Claimant further asserted that he received no response to his subsequent inquiries regarding the promised money. Claimant also alleged that Robert Todd was later taken over by Dickinson Securities and that Carr who was then affiliated with Dickinson promised to cooperate with him in filing a claim against Robert Todd. Claimant contended that Carr and Robert Todd are liable for his loss, which is the difference between the value of the stock if it had been sold on December 6, 1994 and the value at the time of the Arbitrator's decision.

Respondent Robert Todd Financial Corporation failed to file a Statement of Answer.

Claimant withdrew all claims against Respondent John Carr prior to the decision on the merits.

RELIEF REQUESTED

Claimant Robert E. Brown requested \$9,417.50 in actual damages, plus interest.

Respondent Robert Todd Financial Corporation failed to file a Statement of Answer.

AWARD

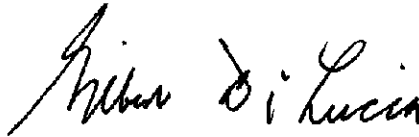
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gilbert DiLucia, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 21, 1995 and not by Respondent Robert Todd Financial Corporation as required by Section 10302 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 Claimant David E. Brown against Respondent Robert Todd Financial Corporation are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David E. Brown shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **GILBERT DILUCIA, ESQ.**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument, which is my award.

A handwritten signature in cursive script, reading "Gilbert DiLucia", positioned above a horizontal line.

Signature of Arbitrator

DATE OF DECISION: December 6, 1996

Claimant asserts that he sustained a loss of \$9,417.50 and bases his claim on an order to sell 3,000 shares of Interstate National Dealer, Inc. (ISTN) that he transmitted to his broker by Federal Express. The broker asserts that he never received the order.

It appears that claimant placed three separate orders of 1,000 shares each, to buy his stock, over the telephone. He did not choose to sell the stock by telephone on December 2, 1994, the date he sent the order to sell by Federal Express. Nor did he choose to confirm the receipt of the FedEx order, by telephone. Instead claimant went out of town until December 20, 1994, when not hearing a response from his broker, he again sent another letter by FedEx, and it was not until "after the holidays" (quoting claimant) that he finally telephoned his broker and learned that his letters had not been received.

It is the opinion of the arbitrator that claimant did not employ the "trade usage" in the securities business in using the telephone to buy, sell or confirm trades. Trade Usage is defined by Black's Law Dictionary as: "any practice or method of dealing, having such regularity of observance in a place, vocation or trade as to justify expectation that it will be observed with respect to the transaction in question."

If claimant was not negligent, he was certainly not prudent by not using the telephone to sell, or confirm the sale of his stock. He cannot claim that he waited until "after the holidays" to make sure his sell order had been filled, and then ask the NASD to bail him out of the loss he sustained when he finally sold on March 16, 1995. If claimant cannot monitor his transactions, and tend to his business by following trades closely, no one can do it for him.

As of 11 a.m. today, October 16, 1996, the stock in question, Interstate National Dealer Services (ISTN), is quoted at 4 7/8ths (four and seven-eighths) bid and 5 1/16th (five and one-sixteenth) ask. If claimant did not sell, he would "be even", or nearly so, today.

This claim is dismissed in its entirety.

Robert DiLucia,
Arbitrator