

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Goldie Engel

95-01043

Name of Respondent

Datek Securities Corp.

REPRESENTATION

Goldie Engel appeared pro se.

For Respondent: David Jarvis, Esq., from the law firm of Singer, Bienenstock, Zamansky, Ogele & Selengut, LLP, New York, NY

CASE INFORMATION

Statement of Claim filed: February 28, 1995.

Claimant's Submission Agreement signed on: February 27, 1995.

Statement of Answer filed: April 20, 1995.

Respondent's Submission Agreement signed on: April 20, 1995.

HEARING INFORMATION

Hearing dates/sessions: March 11, 1996 (2 Sessions)

The hearings were held at the offices of the National Association of Securities Dealer, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that on August 18, 1994 she went to Datek Securities Corp. ("Datek") and showed Chaim Krauss ("Krauss") an Investor's Business Daily article which recommended CISCO Systems, Inc. ("CSCO") as a buy. Claimant alleged she ordered the purchase of 2,000 shares of CSCO at \$22.00 per share. Claimant further alleged Krauss executed and confirmed the purchase shortly thereafter, stating: "you bought it, it went through."

Claimant alleged that on August 23, 1994 she ordered the sale of 2,000 CSCO shares at \$23.25 per share. Claimant alleged that on August 29, 1994 she again ordered the purchase of 2,000 shares of CSCO at \$26.375 per share. Claimant further alleged that shortly thereafter Krauss confirmed the purchase, stating: "it went through."

Claimant alleged she received no formal written confirmation regarding the August 18, 1994 purchase of 2,000 shares of CSCO. Claimant alleged that when she confronted Krauss about the confirmation he stated that he would receive it shortly. Claimant further alleged she accepted Krauss' explanation since Datek had sent confirmations late before.

Claimant alleged she visited Datek to order the sale of her August 29, 1994 purchase of 2,000 shares of CSCO and that when she tried to execute the sale Krauss told Claimant: "You don't have CISCO, you never had it." Claimant further alleged she spoke to the owner of Datek, who referred her to Ezra Birnbaum ("Birnbaum").

Claimant alleged Birnbaum stated she had never bought CSCO, but instead shorted CSCO. Claimant alleged she did not know, and never knew, what short selling meant. Claimant further alleged she paid for the August 29, 1994 purchase of CSCO with the proceeds from the August 23, 1994 sale of CSCO.

Finally, Claimant alleged Respondents' had overcharged her on commissions on the trades they had executed for her.

Respondent maintained that Claimant was an experienced and sophisticated investor who had accounts at several other brokerage firms for many years and that Claimant should be held responsible for her self directed trading losses.

Respondent maintained Claimant was mistaken when she claimed she placed a limit order on August 18, 1994 to purchase 2,000 shares of CSCO at \$22.00 per share. Respondent maintained that since CSCO never traded below \$23.25 on that day, the trade would not have been executed even if the order had been placed. Respondent maintained Claimant actually placed a limit order on August 22, 1994 for 2,000 shares of CSCO at \$22.00 per share. Respondent further maintained that since CSCO never traded below \$22.125 on that day no purchase was ever made.

Respondent maintained that on August 23, 1994 Claimant instructed Krauss to sell 2,000 shares of CSCO. Respondent maintained that since Claimant did not own any shares of CSCO, Krauss shorted 2,000 shares. Respondent further maintained that when Claimant noticed the price of CSCO was going up so she instructed Datek to cover her short position on August 29, 1994 by purchasing 2,000 shares at \$26.375 per share.

Respondent maintained Claimant came to Datek and was told she had no shares of CSCO, as the August 29, 1994 sale covered her short sale on August 23, 1994.

In addition, Respondent maintained that Claimant understood the term short selling. Respondent further maintained Claimant would often place a limit order just lower than the market price, hoping the price would drop, at which time the limit order would be executed.

Finally, Respondent maintained Claimant could not have been too unhappy with the service she was receiving from Datek; since she executed at least 17 additional transactions in the two month period after the CSCO transactions, which are the subject of her complaint.

RELIEF REQUESTED

Claimant requested \$10,979.35. representing the damages incurred by the conduct of Krauss and Datek.

Respondent requested that all claims be denied and, in addition, requested an award of costs incurred in defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

1. At the conclusion of the hearing on March 11, 1996, the Arbitrator closed the record with the exception of receiving the alleged order ticket evidencing a purchase of 2000 shares of CSCO at \$22.00 from Respondent. Claimant was given a opportunity to reply to the submission. On March 13, 1996 Respondent submitted the alleged order ticket representing Claimant's August 22, 1994 limit order. On March 14, 1996 Claimant submitted a letter in response to the order ticket. Respondent submitted a Motion to Strike Claimant's response of March 14, 1996 stating that Claimant was permitted a limited opportunity to respond to the submitted order ticket and that Claimant's response went far beyond the scope of the Arbitrator's order. After reviewing the letters submitted by the respective parties, and Respondent's Motion, the Arbitrator granted Respondent's Motion.

2. 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. Respondent, Datek Securities Corp., is liable and shall pay to Claimant, Goldie Engel, in the sum of \$6,257.50, with 9% interest from September 1, 1994 until the date of payment.
2. Claimant Goldie Engel's Claim for overcharge of commission and lost profits is denied.
3. Respondent is directed is liable and shall pay to Claimant, Goldie Engel, the sum the sum of \$200.00 representing reimbursement of the hearing session deposit paid by Claimant.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Hearing Session Fees	(2 x \$200.00) =	\$	400.00
Total Forum Fees:		\$	400.00

Respondent Datek Securities Corp. is assessed \$400.00, representing the total forum fees due, less \$200.00 paid to Claimant, leaving \$200.00 due. Respondent, Datek Securities Corp. is liable and shall pay to the NASD the sum of \$200.00.

Page 5

NASD Award Case No. 95-01043

ARBITRATOR'S SIGNATURE

Michael Shannon

Michael Shannon, Esq.
Public Arbitrator Chairperson

Date of decision: 7/19/96

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

Michael Shannon

Michael Shannon, Esq.