

N.A.S.D. MODIFIED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Henry Balboni

95-01547

Name of Respondents

Frank Pizzolato  
Millard G. Thomas

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 27, 1995, Claimant Henry Balboni ("Claimant"), who appeared Pro Se, alleged that Respondent Frank Pizzolato ("Pizzolato") recommended, and Claimant bought, 500 shares at Physicians Computer Network Inc. ("PCNI") in a telephone solicitation by Respondent on December 5, 1994. Claimant further alleged that Respondent Pizzolato recommended, but Claimant refused to buy, shares of American Toys ("Atoy") and Porter McLead Nat'l Retail, Inc. ("PMNR") in a second telephone solicitation by Respondent on January 23, 1995. Claimant contended that approximately 1 week later, he learned that these had been unauthorized activity in his account reflecting the sale of Claimants PCNI shares, and the purchase of 200 shares of PMNR. Claimant further contended that the share price of PMNR dropped from 11 1/2 to 2 1/2 from the purchase date to the claim date, March 22, 1995. Claimant alleged that his account was never credited the \$154.00 difference between the PCNI selling price and the PMNR purchase price. Claimant further alleged that although all his contacts regarding the disputed transactions were with Pizzolato, Respondent Thomas is listed as co-account executive on Claimant's account statements. Claimant contended that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent Frank Pizzolato, through his representative and counsel, Darren Lampert, Esq., of Lampert & Lampert, located in New York, NY, maintained that Claimant authorized all transactions in his account. Respondent further maintained that Claimant is barred from recovery due to his failure to timely object to the disputed transactions. Respondent contended that Claimant's loss, if any, was caused or contributed to by Claimant's own fault or conduct, and not by Respondent. Respondent further contended that as a result of the above, he should not be held liable.

Respondent Millard G. Thomas, who appeared Pro Se, maintained that Claimant's own admission, Respondent never contacted Claimant nor had any involvement in the events which gave rise to the above claim. Respondent further maintained that there is no allegation brought against him specifically by Claimant in the above claim. Respondent contended that as a result of the above, he should be drop as a Respondent in the above claim.

**RELIEF REQUESTED**

Claimant Henry Balboni, requested \$1,600.00 in actual damages, or the return of the disputed 500 shares of Physicians Computer Network Inc.

Respondent Frank Pizzolato, requested that the claims of the Claimant be dismissed in their entirety.

Respondent Millard G. Thomas, requested that the claims of the Claimant be dismissed in their entirety.

**AWARD**

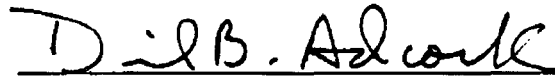
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David Brooks Adcock, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Henry Balboni, on March 21, 1995, and by the Respondent Frank Pizzolato, on January 16, 1996, and not by Respondent Millard G. Thomas, as is required by Sections 12 and 13 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 Henry Balboni, against Respondent Millard Thomas, are denied in their entirety.
2. The Respondent Frank Pizzolato, is liable and shall pay to the Claimant Henry Balboni, \$1,600.00 in actual damages.
3. The Respondent Frank Pizzolato is liable and shall pay to the Claimant Henry Balboni, simple interest at the rate of 8% per annum from February 1, 1995 to date of payment of the award.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Henry Balboni, shall be retained by the NASD, Inc. The Respondent Frank Pizzolato is liable, and shall pay to the Claimant Henry Balboni, \$50.00 as reimbursement of the filing fee.
6. All other relief requests are denied.

**AFFIRMATION**

I, **DAVID BROOKS ADCOCK, 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.

  
\_\_\_\_\_  
David Brooks Adcock, Esq.

DATE OF MODIFIED DECISION: April 10, 1996