

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Frank P. Anzellotti

9503039

Name of RespondentsDavid Berger
Eric Peremen
Ron Liter
Christian Rizzo
Martin Burke© National Association of
Securities Dealers, Inc.

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REPRESENTATION

Claimant Frank P. Anzellotti ("claimant") appeared pro se.

Respondent David Berger ("Berger") appeared pro se.

Respondent Eric Peremen ("Peremen") appeared pro se.

Respondent Ron Liter ("Liter") appeared pro se.

Respondent Christian Rizzo ("Rizzo") appeared pro se.

Respondent Martin Burke ("Burke") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim was filed on June 19, 1995. Claimant's Submission Agreement was signed on June 13, 1995. Claimant's Supplement to Statement of Claim was filed on August 18, 1995.

Statement of was Answer filed by Berger on July 25, 1995. Berger's Submission Agreement was signed on August 28, 1995.

Statement of Answer was filed by Peremen on September 1, 1995. Peremen's Submission Agreement was signed on August 1, 1996.

Statement of Answer was filed by Liter on July 25, 1995. Liter's Submission Agreement was signed on July 25, 1995. Liter's Amendment to Statement of Answer was filed on August 7, 1995.

Statement of Answer was filed by Rizzo on August 4, 1995. Rizzo's Submission agreement was signed on August 4, 1995.

Respondent Burke did not file a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: April 8, 1996 - One Session

The hearing was held at the Double Tree Guest Suite Hotel located in Cincinnati, Ohio.

CASE SUMMARY

Claimant alleged that, on June 29, 1994, after being contacted by a broker at Barrett Day Securities, he purchased 200 shares of Tara West Ventures, Inc. ("Tam") and that, on August 12, 1994, he purchased an additional 200 shares of Tara. Claimant further that, on November 15, 1994, he received a notice that 1000 shares of Tara had been purchased for his account at \$7.00 a share for a total of \$7,012.00. Claimant asserted that he did not order this purchase.

Claimant asserted that he made repeated calls to the company and was continually informed that the purchase was due to a computer error and it would be taken care of. Claimant further alleged that he attempted to speak to Berger, but that Berger refused to speak with him.

Claimant alleged that, on December 5, 1994, he received a notice of the sale of 1182 shares of Tara for a total of \$7,006.13 and when he called to complain he was again told that the matter would be taken care of.

Berger maintained that he had nothing to do with the transaction at issue and that claimant named him as a respondent merely to harass him. Berger further maintained that claimant purchased 1000 shares of Tara and then refused to pay for it.

Peremen maintained that he had no relationship with claimant and had no knowledge of the transaction in question.

Liter maintained that, he had a conversation with claimant, in which he recommended that claimant hold the security. Liter further maintained that claimant was not his client. Liter contended that claimant was estopped from asserting the claim against him because Barrett Day was no longer in business and he would not be able to adequately prepare his defense.

Rizzo maintained that claimant was never a client of his, but that he did speak to claimant on the telephone once when no one else was available. Rizzo contended that, when claimant complained about the trade, he checked with the back office and then told claimant that there

was an error and it was being corrected. Rizzo further maintained that to the best of his knowledge the matter was resolved by the back office.

RELIEF REQUESTED

Claimant requested a full refund of all monies lost, plus expenses and punitive damages, not exceeding a total of \$10,000.00.

Berger requested that he be removed a party in this matter.

Peremen requested that he be removed as a party in this matter.

Liter requested that the claim be dismissed in its entirety, with costs and attorneys fees.

Rizzo did not specifically request relief.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator made the following determinations as to respondents Berger, Peremen, Liter, and Rizzo, who did not appear at the hearing conducted in this matter, and respondent Burke, who did not file a Statement of Answer or a Submission Agreement and also did not appear at the hearing conducted in this matter:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the arbitrator found subject matter jurisdiction over this entire controversy.
2. The arbitrator found that Berger, Peremen, Liter, Rizzo and Burke were persons associated with a member of the NASD at the time this controversy arose. Consequently, the arbitrator found personal jurisdiction over these respondents pursuant to Section 12 of the Code.
3. The arbitrator found that respondent Burke was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the Code. In this regard, the arbitrator found that Burke was properly served with the Statement of Claim in this matter, pursuant to Section 25(a) of the Code.
4. In accordance with Sections 21, 26 and 29 of the Code, the arbitrator found that the NASD provided respondents Berger, Peremen, Liter, Rizzo and Burke with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitrator, therefore, determined to proceed with the hearing without these respondents present as their absence was unexcused.

Respondents Berger and Rizzo testified at the hearing in this matter by telephone.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Berger and Burke be and hereby are jointly and severally liable and shall pay claimant the sum of \$3,692.50 in actual damages.
2. Respondents Berger and Burke be and hereby are jointly and severally liable and shall pay claimant the sum of \$6,307.50. in punitive damages.
3. All claims against Peremen, Liter and Rizzo are dismissed in their entirety.
4. Each party shall bear their own costs,
5. All other claims are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$75.00 non-refundable filing fee and the \$200.00 hearing session deposit as full consideration for the hearing conducted in this matter.

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Concurring Arbitrators' Signatures


Charles E. Fletcher, III, Esq.

, sole arb. trator:

Dated: August 14, 1996