

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

Hansraj and Kusum Ashar

Case No. 95-03450

Name of Respondents

Berkeley Securities Corporation and
Frank Ragusa

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") on July 17, 1995, Claimants Hansraj and Kusum Ashar ("Claimants"), who were represented by Hansraj Ashar, alleged that on January 6, 1995 Respondent Frank Ragusa ("Ragusa"), an account executive at Berkeley Securities Corp. ("Berkeley"), called Claimant Hansraj Ashar ("Mr. Ashar") to buy shares in Bitwise Design Inc. ("Bitwise"). Claimants alleged, among other things, that Mr. Ashar told Ragusa that Claimants did not want to purchase Bitwise. Claimants alleged that approximately one week later they received two confirmation slips. One reflected that claimants had sold 900 shares of STET-ORD and the other reflecting that Claimants had purchased 1000 shares of Bitwise. Claimants alleged that these transactions were unauthorized. Claimants alleged that when they complained about these transactions nothing was done to correct the situation so they filed this arbitration.

Respondents Berkeley and Ragusa denied all allegations of wrongdoing asserted by Claimants. Respondents maintained, among other things, that Claimant Mr. Ashar authorized Ragusa to sell 900 shares of STET-ORD and purchase 1000 shares of Bitwise. Respondents maintained that this transaction took place on January 6, 1995. Respondents maintained that Respondent Berkeley unexpectedly went out of business on January 13, 1995. Respondents maintained that Berkeley made a market in Bitwise. Respondents maintained that when Berkeley went out of business the value of Bitwise dropped dramatically. Respondents maintained that when the value of Bitwise declined dramatically,

Mr. Ashar tried to renege on the trade and fabricated this claim. Respondents maintained that Mr. Ashar is an experienced investor who made the decisions for Claimants' account. Respondents maintained that they serviced Claimants' account with care and good faith. Berkeley maintained that when Claimants failed to cover their trade, Berkeley was forced to "sell out" Bitwise. Berkeley maintained that Claimants transferred their remaining securities in their account to Merrill Lynch Pierce Fenner & Smith, Inc. and left a debit balance of \$40 in Claimants' account. Berkeley maintained that it journaled the debit balance to its account and absorbed the loss.

RELIEF REQUESTED

Claimants requested damages for the losses in his account in the amount of \$7,219.00; plus, cost and arbitration fees in the amount of \$1,125 for a total claim of \$8,344.00.

Respondents requested that Claimants' claim be dismissed in its entirety and that costs be assessed against Claimants.

AWARD

Pursuant to Section 13 of the NASD Regulation Code of Arbitration Procedure, a single public Arbitrator, Charles E. Eby, Jr., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 14, 1995, by Frank Ragusa on August 25, 1995 and executed by Phyllis Henderson on behalf of Berkeley Securities on May 31, 1996.

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. That Respondent Berkeley is liable to Claimants and shall pay to Claimants the sum of \$2,681.20; no interest is awarded on this amount.
2. That Respondent Ragusa is liable to Claimants and shall pay to Claimants the sum of \$670.30; no interest is awarded on this amount.
3. Claimants' request for costs is denied, Claimant's hearing session deposited of \$75.00 shall be refunded by the NASD Regulation and all other fees shall be retained.
4. Any and all requests for relief not specifically addressed herein is denied.

AFFIRMATION

I, **CHARLES E. EBY, JR.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE AWARD SERVED BY THE NASD REGULATION: *October 22, 1996*

STATE OF: Delaware

SS:

COUNTY OF: Sussex

On this 14th day of October 19 96, before me personally appeared **CHARLES E. EBY, JR.** to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Linda P. Williams - Notary Public

Linda P. Williams
Notary Public, State of Delaware
My Commission Expires July 23, 1993