

9608113

2/96

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Teh Y. Hu and Hong Hu

95-03775

Name of Respondent(s)

Empire State Securities

Ann Ling Shih

© National Association of
Securities Dealers, Inc.

All Rights Reserved

REPRESENTATION

For Claimants Teh Y. Hu and Hong Hu ("Claimants") appeared Martin Sharit, Esq. a sole practitioner located in Hackensack, New Jersey.

For Respondent Empire State Securities ("Empire") appeared John E. MacDonald, Esq. of Robert H. Jaffe & Associates, P. A. located in Springfield, New Jersey.

Respondent Ann Ling Shih ("Shih") did not appear.

CASE INFORMATION

Statement of Claim filed: August 3, 1995.

Claimants' Submission Agreements were signed on: January 22, 1995.

Statement of Answer filed by Respondent on: September 25, 1995.

Respondent Empire State Securities's Submission Agreement signed on: September 8, 1995.

Respondent Ann Ling Shih neither filed a Statement of Answer nor executed a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: July 11, 1996 - Two Sessions

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

CASE SUMMARY

Claimants alleged that they invested **\$25,000.00** with Respondent Empire for the purchase of stock, and that Respondent Shih represented herself as Vice-President of the company and as a stockbroker, and she presented a business card evidencing this fact. Claimants further alleged that after the money was invested Respondents failed to mail out statements or continue to advise Claimants of the status of the investments. Claimants also alleged that they desired to sell the stock, however, they were advised repeatedly by **Shih** to be patient.

Claimants asserted that they granted Shih a limited Power of Attorney and that they were subsequently advised by Shih that she was now employed by more than one company, and that she was **investing** money with another company. Claimants further asserted that a check was issued to "Teh Y. Hu c/o Ann Ling Shih **JT/WROS**" in the amount of **\$4,000.00** and that this check should have only been made payable to "Mr. & Mrs. Hu". Claimants also asserted that this check was subsequently endorsed fraudulently in the name of Mr. Hu and that they have no knowledge of what happened to this money, but they know that the check was delivered to Shih.

Claimants contended that Empire permitted Shih to represent herself as an employee and that she brought clients to the **firm** other than Claimants. Claimants further contended that Empire provided Shih with great latitude to make decisions for these people brought to the **firm**, and that Empire derived commissions from dealings with claimants. Claimant also contended that Shih should have never been allowed to act as an agent for Empire if she in fact was not licensed to do so .

Respondent Empire maintained that on or about January 19, 1994, Shih and Claimant Hong Hu came to the offices of Empire to further Hong Hu's intention to open a brokerage account for Hong Hu's husband, Claimant Teh Y. Hu. Respondent Empire further maintained that Shih is not an employee or agent of Empire, nor has she ever been and, furthermore, during the January 19, 1994 meeting, Mr. Robert Spitzer ("**Spitzer**") of Empire told Hong Hu that Shih was not an employee or agent of Empire, that Shih was not a broker, and that the Claimants needed to execute a trading authorization. Respondent Empire maintained that Hong Hu left the offices of Empire with forms appropriate to that purpose.

Respondent Empire contended that on or about January 25, 1994, Hong **Hu** and Shih returned to the **offices** of Empire bearing an Option Account Application executed by claimant Teh Hu and that Hong Hu also presented Empire with a limited power of attorney naming Shih as an agent authorized to act on behalf of the account of Teh Hu. Respondent Empire further contended that Shih presented a check in the amount of **\$25,000.00** dated January 21, 1994 executed by Teh Hu and that- also during the January 25, 1994 office visit, Hong Hu specifically requested that all confirmations and statements be sent to Shih.

Respondent Empire also contended that at no time did it indicate or infer that **Shih** was acting

Page Three
Award 95 -03775

on behalf of the company and that Shih has never received salary or commission from Respondent. Respondent Empire maintained that based upon representations made by Shih to Respondent in the presence of Hong Hu during the two office visits previously described, the company reasonably believed that Shih was acting as a financial adviser to the Claimants. Respondent Empire further maintained that the account traded briefly until March of 1995, when the Claimants' investment was returned in the form of checks issued by Ernst & Co. and dated March 25, 1994 (\$8,026.00), April 6, 1994 (\$4,000.00), April 11, 1994 (\$4,000.00), April 13, 1994 (\$4,000.00), and April 15, 1994 (\$4,433.32). Respondent Empire also maintained that all of the foregoing checks were made payable to "Teh Y. Hu & c/o Ann Ling Shih JT/WROS." Respondent Empire maintained that four of the checks were individually endorsed by Teh Hu, the check dated April 6, 1994 was endorsed by both Claimant Teh Hu and by Shih. Respondent Empire contended that the reverse side of all of the checks show that they were accepted, stamped and processed, and that the Claimants are estopped, therefore, since they have received all monies owed to them by Respondent. Respondent Empire further contended that any questions relating to the validity of the signatures endorsing the above checks are properly directed towards the banks which accepted them, and are in no way the responsibility of Respondent Empire.

RELIEF REQUESTED

Claimants requested that they be reimbursed their \$25,000.00 plus interest, costs, and legal fees, bringing the total loss to approximately \$30,000.00.

Respondent Empire requested that the claims in the Statement of Claim be dismissed in their entirety.

OTHER ISSUE:3 CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning Respondent Ann Ling Shih who did not file a Statement of Answer nor a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. The Arbitrator found that Respondent Ann Ling Shih was not served with the Statement of Claim. Therefore, the claims against Respondent Shih are dismissed without prejudice.

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.

Page Four
Award 95-03775

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. All claims against Respondent Arm Ling Shih be and hereby **are** dismissed without prejudice.
2. Respondent Empire State Securities be and hereby is liable and shall pay to the Claimants **\$16,433.32** plus 9% interest from April 15, 1994.
3. All parties shall bear their respective costs, including attorney's fees.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section **43c** of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable **filing** fee previously deposited by Claimants and have assessed the following forum fees:

2 Sessions x \$300.00 = \$600.00

Claimants be and hereby are liable for the sum of \$300.00 representing one half of the total amount of forum fees assessed. Claimant previously deposited \$300.00 with the NASD. Therefore, nothing is owed to the NASD by the Claimant.

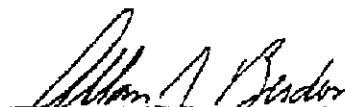
Respondent Empire be and hereby is liable for the sum of \$300.00 representing one half of the total amount of forum fees assessed.

Fees are payable to the National Association of Securities Dealers, Inc.


9608113

Page Five
Award 95-03775

ARBITRATORS SIGNATURE


Allan Berdon, Esq.
Public chairperson

I, Allan Berdon, do hereby affirm that this is my decision in the above-captioned matter.



DATE OF DECISION: August 27, 1996