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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Philip Polonet

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Name of Respondent

National Discount Brokers

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Securities Dealers, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 19, 1995, Claimant Philip Polonet ("Claimant"), who appeared Pro Se, alleged that Respondent National Discount Brokers ("Respondent"), failed to properly maintain an adequate phone system and as a result Claimant was unable to promptly sell his shares of TIRE stock. The Claimant alleged that his wife maintained an account with the Respondent. Claimant asserted that acting as his wife's representative, he attempted to sell 1,000 shares of TIRE at approximately 10:00 AM on July 14, 1995. The Claimant maintained that at the time he attempted to sell the TIRE stock, it was trading at \$6 5/6. Claimant contended that he attempted to contact the Respondent for several hours before he was finally able to reach a representative of the Respondent and that the delay was caused by the Respondent's inadequate phone system. The Claimant asserted that by the time that he was able to contact the Respondent, the price of TIRE stock had declined to \$3 1/2. The Claimant maintained that due to the decrease in the price of the stock, he initially only sold 300 shares and sold the remaining 700 shares for a total loss of \$2,800. Claimant asserted that the Respondent failed in its duty to maintain an adequate phone system and that because of the Respondent's wrongdoing, the Claimant has sustained damages for which the Respondent should be held liable.

Respondent National Discount Brokers, through its Representative and Chief Compliance Officer, Seth Rosen, maintained that the Claimant failed to provide any evidence that he had made the calls in question on July 14, 1995. The Respondent also asserted that it offered to the Claimant an automated phone order entry system in which the Claimant would not have experienced any significant delays but which the Claimant chose not to use. Although Respondent admitted that there was a high volume of calls being received during the period in question, Respondent asserted that its phone system was maintained at industry level standards and that Claimant exercised no patience in reaching a representative to place his orders. The Respondent asserted that the Claimant's claims that the Respondent should be held responsible for the perceived loss due to the Claimant's failure to reach a representative were not reasonable nor supported by any known business or industry principle. The Respondent further asserted that it had committed no wrongdoing and that it should not be held liable.

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RELIEF REQUESTED

Claimant Philip Polonet requested \$2,800.00 in actual damages.

Respondent National Discount Brokers requested that the claims of the Claimant be dismissed and that it be awarded its costs in defending this action, including NASD fees and attorney's fees.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David S. Billet, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 6, 1995, and by the Respondent on April 10, 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:

The claims of the Claimant Philip Polonet against Respondent National Discount Brokers are dismissed in their entirety.

2. The parties shall bear their respective costs.

3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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AFFIRMATION

STATE OF

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ss:

COUNTY OF

I, DAVID S. BILLET 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 S. Billet

Signature of Arbitrator

DATE OF DECISION: June 12, 1996