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## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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Securities Dealers, Inc.

In the Matter of the Arbitration Between

1996

Yuanzhen Tong,

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Claimant,

v.

No. 95-04788

AAA Stockbrokers, Inc., and  
Peter Fusung Wu,

Respondents.

## REPRESENTATION OF PARTIES

Claimant Yuanzhen Tong was represented by J. Brantley Sanders, Esquire of The Barbknecht Firm, located in Dallas, Texas.

Respondents AAA Stockbrokers, Inc. and Peter Fusung Wu were represented by Jonathan A. Pace, Esquire of Pace & Rickey, LLP located in Dallas, Texas.

## CASE INFORMATION

Claimant Yuanzhen Tong's Statement of Claim was filed on or about October 11, 1995. Claimant Yuanzhen Tong's Submission Agreement was signed on October 5, 1995.

Respondents AAA Stockbrokers, Inc. and Peter Fusung Wu's joint Statement of Answer was filed on or about November 17, 1995.

The MASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement by respondent AAA Stockbrokers, Inc.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement by respondent Peter Fusung Wu.

## HEARING INFORMATION

The hearing was held on June 20, 1996 for two (2) sessions.

The hearing was held in Dallas, Texas.

### **CASE SUMMARY**

Claimant Yuanzhen Tong ("Claimant") alleged that respondent Peter Fusung Wu, through his employer, respondent AAA Stockbrokers, Inc., (hereinafter collectively referred to as "Respondents") failed to follow her instructions and falsified documents in order to alter the instructions and to show, incorrectly, that Claimant had agreed to a margin account. Claimant asserted that on August 1, 1995, she and her husband submitted a New Account Approval Form and a \$16,000 check in order to purchase shares of Netscape Common Stock ("Netscape"). According to Claimant, she and her husband told respondent Peter Fusung Wu ("respondent Wu") not to purchase Netscape if the price was over \$30.00 per share, which respondent Wu wrote on the New Account Approval Form. Claimant asserted that respondent Wu had her sign two other forms, but did not let her see them and did not give her copies. Claimant stated that on August 9, 1995, her husband contacted respondent Wu at which time he informed her that he purchased 500 shares of Netscape for her at a price of \$71.00 per share. Claimant next asserted that her husband instructed respondent Wu to sell these shares of Netscape immediately, to which respondent Wu responded that he could not sell the shares immediately. Claimant further asserted that on August 15, 1995 she received the transaction notice which stated that she had purchased 500 shares of Netscape for \$71.205 per share, and that on August 16, 1995 she received another stating that she had bought 500 shares of Netscape at \$71.00 per share. Claimant stated that on August 16, 1995, she also received a letter requesting her consent to a margin account, one that respondent Wu had apparently already signed for her, and a request for payment of \$1,700 to make up for a margin deficiency. According to Claimant, the copies respondent Wu had of the forms she signed and submitted to him were nonconforming to the originals; specifically, Claimant noted that her instruction to not purchase Netscape if over \$30.00 per share was removed from respondent Wu's copy and that the account type was marked as cash and margin on his copy only. Claimant asserted that on August 22, 1995, 110 of her shares of Netscape were sold for \$51.25 per share in order to cover the margin deficiency. Then Claimant asserted that she requested that the rest of her shares of Netscape be sold, which they were on August 25, 1995, for \$51.25 per share.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically denied that there was no limit order on the price of the 500 shares of Netscape Claimant requested purchase.

### **RELIEF REQUESTED**

Claimant Yuanzhen Tong requested an award of a full refund, exemplary damages, plus reasonable attorneys' fees.

Respondents AAA Stockbrokers, Inc. and Peter Fusung Wu requested that the claims asserted against them be denied in their entirety and that they be awarded their costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent AAA Stockbrokers, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondent Peter Fusung Wu did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At hearing, respondents AAA Stockbrokers, Inc. and Peter Fusung Wu moved that evidence of other pending cases and SEC actions not be admitted. The undersigned chairperson ruled that evidence of SEC investigations would not be admitted, but that some testimony on other pending claims could be given subject to further objection and ruling at that time. 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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) That respondents AAA Stockbrokers, Inc. and Peter Fusung Wu are jointly and severally liable and shall pay claimant Yuanzhen Tong \$10,161.23 in compensatory damages, plus interest which begins to accrue August 29, 1995;
- (2) That respondents AAA Stockbrokers, Inc. and Peter Fusung Wu are jointly and severally liable and shall pay claimant Yuanzhen Tong \$3,000 for attorneys' fees based on oral testimony; and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

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**FORUM FEES**

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$300 = \$600 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Yuanzhen Tong.

Respondent AAA Stockbrokers, Inc. is liable for and shall pay the member surcharge fee in the amount of \$200 pursuant to § 10333 of the NASD Code of Arbitration Procedure.

Respondents AAA Stockbrokers, Inc. and Peter Fusung Wu are jointly and severally liable for and shall pay forum fees in the amount of \$300 (= \$600 total forum fees - \$300 hearing session deposit by claimant Yuanzhen Tong).

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Wayne M. Whitaker  
Wayne M. Whitaker, Esquire  
Public Arbitrator, Presiding Chair

October 31, 1996