

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John J. Kelley

vs.

Award No.
95-04919

Name of Respondents

Barron Chase Securities
George Klepacki

REPRESENTATION

For Claimant, John Kelley ("Claimant"), Frank Liberty, Esq. from the law firm of Greenberg and Parenteau, located in New London, Massachusetts.

For Respondent, Barron Chase Securities, Inc. ("Barron Chase") Eugene M. Kennedy, Esq. attorney at law, located in Fort Lauderdale, Florida.

For Respondent, George Klepacki, ("Klepacki"), Christopher C. Noble, Esq., attorney at law, located in Hartford, Connecticut.

CASE INFORMATION

Claimant's Statement of Claim was filed on October 16, 1995.

Claimant's Submission Agreement was signed on October 12, 1995.

Claimant's Motion to Bar Respondents Pursuant to Section 25(b)2 was filed on February 23, 1996.

Claimant's Request for Arbitrators to Disapprove Respondents' Request for Leave to File Late Response to Claim was filed on March 13, 1996.

Claimant's Amended Response to Respondent Barron Chase's Statement of Answer and Affirmative Defenses was filed on April 1, 1996.

Claimant's Response to Respondent Klepacki Request For Affirmative Relief was filed on March 22, 1996.

Statement of Answer was filed by Respondent Barron Chase on March 15, 1996.

Respondent Barron Chase's Submission Agreement was signed on March 1996.

Respondent Barron Chase's Response to Claimant's Motion to Bar was filed on March 11, 1996.

Request For Late Filing was filed by Respondent Klepacki on March 6, 1996.

Statement of Answer was filed by Respondent Klepacki on March 13, 1996.

Respondent Klepacki's Objection to Claimant's Motion to Bar was filed on March 19, 1996.

HEARING INFORMATION

Hearing Date/Sessions: April 19, 1996 - 2 sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that on Respondent Klepacki's promise of no commission upon the purchase of stock and only a 1/4 point per share commission upon the sale of stock, he decided to purchase 10,000 shares of Network Connection, recommended by Respondent. Claimant states that Respondent Klepacki handled this transaction in such a way as to gain Claimant's confidence so that Claimant would engage in further purchases and sales of securities through Respondent and not be suspicious of Respondent Klepacki's misrepresentations and fraudulent statements. Claimant further alleges that he received several more phone calls from Respondent recommending that Claimant purchase 20,000 shares of View Tech at the initial public offering and sell 10,000 shares at a profit several days thereafter. Claimant alleges that he instructed Respondent to purchase 10,000 shares of View Tech at \$5.00 per share after reviewing the prospectus. Claimant did not purchase 20,000 shares of View Tech because he did not have the liquidity necessary to make such a purchase. Claimant states that he purchased the stock on Respondent Klepacki's opinion that the stock would increase in value \$1.50 to \$2.00 per share the first day of the offering, June 16, 1995, and upon the understanding that he would be able to purchase the stock at \$5.00 per share. Claimant alleges that on Sunday, June 18, 1995, when he read that View Tech had opened at \$5.50 and closed at \$6.50, he assumed he could sell his shares and realize a \$15,000 profit minus the 1/4 point per share commission. Claimant further alleges that he contacted Respondent Klepacki on Monday, June 19, 1995, and first learned that Respondent had purchased the shares for him at \$7.00 per share rather than the \$5.00 per share because the CEO of Respondent Barron Chase had directed that the \$5.00 shares should be sold to institutional clients and other brokers. Claimant maintains that this resulted in an immediate paper loss of \$5,000.00 and Respondent Klepacki eventually agreed to resolve the dispute by allowing Claimant to purchase as many shares of View Tech at \$7.00 per share as he could with his \$50,000.00 and to reduce the commission upon sale of the shares to 1/8 point per share. Claimant maintains that he wrote Respondent checks totaling \$52,515.00 to pay for the purchase of a block of 7,500 shares at \$7.00 per share. Claimant maintains that Respondent Klepacki only purchased 7,433 shares at \$7 1/16 per share, which included a mark up of 3/16 per share commission.

Claimant states that he then told Respondents to liquidate his account when Respondent Klepacki and his boss failed to return his calls and/or resolve the dispute. Claimant contends that Respondents charged 3/16 per share in commissions on the sale and sold only 7,433 shares rather than 7,500 he had instructed Respondents to purchase. Claimant also contends that the commission was corrected but he did not receive the additional shares owed.

Respondent Barron Chase denies the allegation of wrongdoing, denies liability to Claimant and asserts seven affirmative defenses. Respondent Barron Chase contends that the transactions in Claimant's account were executed at his express direction and consent. Respondent Barron Chase also contends that Claimant was informed that the initial offering on View Tech was fully allocated and was only available in the free-trading market of a price not exceed \$7.50 per share. Respondent Barron Chase further contends that Claimant did not request cancellation or rescission of the trades. Said Respondent adopts the factual allegations as outlined by Respondent Klepacki.

Respondent Klepacki denies the allegations and denies liability. Respondent Klepacki contends that Claimant in a response card expressed an interest in new issue stocks and was contacted as a potential investor in such stocks and sent a prospectus. Respondent Klepacki states that Claimant received a 0 % mark up on his purchase of the Network Connection because this transaction was for new customers.

Respondent Klepacki also contends that when Claimant called to purchase 10,000 share of View Tech at \$5.00 per share, he was told that the allocation at \$5.00 per share was fully allocated and that Claimant could only purchase them in the after market at up to \$7.50 per share. Respondent Klepacki further maintains that there was no agreement with Claimant to adjust the mark up or the mark down with respect to the purchase of View Tech.

RELIEF REQUESTED

Claimant requests an award of \$15,330.56.

Respondents request that the claims be dismissed with prejudice. Respondent Barron Chase also requests the panel grant them their costs and reasonable attorneys' fees with such further and additional relief as the panel deems warranted under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Prior to the hearing, this Panel denied the Motion to Bar the late answers of Respondents.

Respondent had purchased the shares for him at \$7.50 per share, either through the CEO of Respondent Barron Chase had directed the **AWARD** shares to be purchased through the CEO of Respondent Barron Chase and other brokers. Claimant maintains that this resulted in an **AWARD** shares to be purchased through the CEO of Respondent Barron Chase and other brokers. Claimant maintains that this resulted in an **AWARD** shares to be purchased through the CEO of Respondent Barron Chase and other brokers.

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, Barron Chase Securities, Inc. and George Klepacki, are jointly and severally liable to Claimant, John Kelley, and shall pay him FOUR THOUSAND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS AND FORTY FOUR CENTS (\$4,725.44).
- 2) Respondents, Barron Chase and George Klepacki, are jointly and severally liable for interest and shall pay Claimant pre and post judgement interest at a rate of five percent (5%) from October 12, 1995 until the date of payment.
- 3) All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee:	\$100.00
Hearing Session Fees:	\$800.00 (2 hearing session @ \$400.00 per session)
Total Hearing Fees:	\$900.00

- 1) Claimant is assessed \$300.00 which represents one-third of the total fees. Claimant previously paid \$500.00 and is owed a balance of \$200.00.

- 2) Respondent Barron Chase is assessed \$200.00 and shall satisfy the fees assessed by reimbursing Claimant \$100.00 and remitting the balance \$100.00 to the NASD.
- 3) Respondent Klepacki is assessed \$300.00.

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

ARBITRATION PANEL

Lucy J. Karl, Esq.	-	Public Chairperson
Paul R. Anderson	-	Public Panelist
Gerald H. Powers	-	Industry Panelist

Concurring Arbitrator's Signature

Lucy J. Karl, Esq.
Lucy J. Karl, Esq.

NASD's Date of Decision: June 27, 1996

- 2) Respondent Barron Chase is assessed \$300.00 and shall satisfy the fees assessed by reimbursing Claimant \$200.00 and remitting the balance \$100.00 to the NASD.
- 3) Respondent Klepacki is assessed \$300.00.

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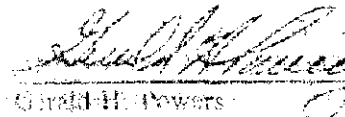
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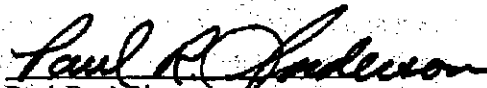
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