

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gerard and Maureen McWeeny

95-05367

Name of Respondents

Commonwealth Associates
Scott Gilman

REPRESENTATION

Claimants Gerard and Maureen McWeeny ("Claimants") appeared pro se.

For Respondents Commonwealth Associates ("Commonwealth") and Scott Gilman ("Gilman") appeared J. P. Wilson, Esq. in-house counsel at Commonwealth Associates located in New York City, New York.

CASE INFORMATION

The Statement of Claim was filed on December 11, 1995. Claimants' Submission Agreement was signed on November 10, 1995.

A Joint Statement of Answer was filed by Commonwealth Associates and Scott Gilman on February 7, 1996.

Respondent Commonwealth Associates' Submission Agreement was signed on February 7, 1996.
Respondent Scott Gilman's Submission Agreement was signed on November 22, 1996.

HEARING INFORMATION

Hearing Date/Sessions: November 22, 1996 - Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York.

CASE SUMMARY

Claimants opened an account with Respondent Commonwealth in December 1993 and that Gilman was his broker for all trades with Commonwealth.

On April 11, 1994 claimant agreed to purchase 2,000 shares of Lottery Enterprises. According to claimants, when he received his transaction notice he saw that 3,000 shares had been purchased instead of 2,000 reflecting he owned a total of 3,000 shares and called Gilman who said he would rectify the account. Claimant maintained that he received a Maintenance Margin Notification and sent a copy to Gilman requesting he correct the account and that claimants had not intended to buy anything on Margin.

Claimant stated he received a letter from Gilman with the current status of Claimant's account. However, claimant contended that subsequent Statements showed a margin account to which Respondents told him was the result of Bear Stearns, Commonwealth's clearing agent, errors and that the corrections were made by Journal entries and would not show up on the monthly statement. In November 1994 Gilman allegedly called claimant to recommend selling Lottery Enterprises. Claimant followed his advice.

Respondents denied any wrongdoing and maintained that at all times it properly supervised its employees. Respondent further maintained that claimant would have known that the trade was made on Margin since they were never asked to send any money in to cover the trade.

Respondents contended that claimants were sophisticated investors who speculated on margin and that they should not be reimbursed. Respondents argued the following affirmative defenses: failure to state a Cause of Action, ratification, Waiver, estoppel, Statute of Limitations, claimant authorized and directed the transactions and respondent properly supervised its employees.

RELIEF REQUESTED

Claimants requested \$11,530.33 the difference between the final sale price and what he received.

Respondents requested a dismissal of claim and costs assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

At the Hearing J. P. Wilson stated he was representing Mr. Gilman and that the Answer previously filed by Commonwealth Associates would constitute Mr. Gilman's submission to the Statement of Claim.

AWARD

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. All claims be and hereby are dismissed.

FORUM FEES

The arbitrator has determined that the NASD shall retain the non-refundable filing fee of \$100.00 previously paid by claimant and has assessed the following forum fees:

2 Hearing sessions x \$400.00	= \$800.00
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The arbitrator has determined that claimants shall be liable for one-half of the cost of arbitration and the respondents shall be jointly and severally liable for one-half the cost of arbitration.

Therefore claimants are liable and shall pay to the NASDR the sum of \$400.00, less \$400.00 previously deposited as a hearing session deposit, net \$0 due.

Respondents Commonwealth Associates and Scott Gilman be and hereby are jointly and severally liable and shall pay to the NASDR the sum of \$400.00.

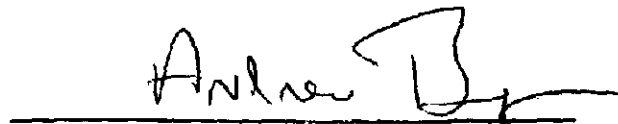
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATOR'S SIGNATURE



Andrew Berger, Esq.
Public Arbitrator

I, Andrew Berger, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law & Rules, that I am the individual described herein, and who executed this instrument which is my award.



Andrew Berger, Esq.

Date of Decision: December 9, 1996