

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank J. Lanza

95-05391

Name of Respondents

Steven Hamm
J.W. Barclay & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 13, 1995, Claimant Frank J. Lanza ("Claimant"), who appeared Pro Se, alleged that Respondents J.W. Barclay & Co., Inc., and Steve Hamm ("Hamm"), its representative, made unauthorized transactions in his account. Claimant further alleged that Respondent Hamm, without authorization, sold his shares of WORK for \$7,785.00, for which Claimant paid a \$402.50 commission. Claimant contended that Hamm then bought the same shares back on the same day for \$7,715.00 and charged Claimant a commission of \$152.50. Claimant further contended that Respondents made these unauthorized trades in order to collect commissions and that he has suffered a loss for which the Respondents should be held liable.

Respondent Steve Hamm, who appeared Pro Se, maintained that the transactions in Claimant's account were fully authorized. Respondent further maintained that Claimant contacted him as a referral and expressed confidence in his ability. Respondent contended that after several profitable short term investments, Claimant agreed to work on his short term trading recommendations and that Respondent offered him discounted commissions. Respondent further contended that he did not accept discretion accounts and that as to the trade in dispute, he sold and repurchased shares only for customers who gave their oral permission. Respondent maintained that Claimant's allegations began only after a mention of a class action lawsuit regarding the type of shares in dispute and after the decline in stock price. Respondent further maintained that Claimant is a knowledgeable and sophisticated investor whose allegations consist of falsehoods and malicious intent, and that he has committed no wrongdoing and therefore should not be held liable.

Respondent J.W. Barclay & Co., Inc. failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Frank J. Lanza, requested \$7,785.00 in actual damages.

Respondent Steven Hamm, requested that the claims of the Claimant Frank J. Lanza be dismissed.

Respondent J.W. Barclay & Co., Inc. failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent J.W. Barclay & Co., Inc., was served by regular mail and given an opportunity to respond, which it failed to do. In addition, service of the overdue answer notice and notification of the Arbitrator's identity was effected upon the Respondent J.W. Barclay & Co., Inc., as evidenced by the signed returned signature card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent J.W. Barclay & Co., Inc. had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Sheldon M. Finkelstein, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Frank J. Lanza, on November 2, 1995, and by the Respondent Steve Hamm, on February 7, 1996, and not by the Respondent J.W. Barclay & Co., Inc., as required by Sections 12 and 13 of the NASD, Inc. Code of Arbitration Procedure.

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:

1. The claims of the Claimant Frank J. Lanza, against the Respondents Steve Hamm and J.W. Barclay & Co., Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Frank J. Lanza, shall be retained by the NASD, Inc.

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AFFIRMATION

I, **SHELDON M. FINKELSTEIN, ESQ.**, 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.



SHELDON M. FINKELSTEIN, ESQ.

DATE OF DECISION: May 15, 1996