

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Donald Arken and Robert Arken

95-05978

Name of Respondents

Washington Discount Brokerage Corp.  
Waterhouse Securities, Inc.

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**REPRESENTATION**

For claimants Donald Arken and Robert Arken ("claimants") appeared Donald Arken.

For respondents Washington Discount Brokerage Corp. ("Washington") and Waterhouse Securities, Inc. ("Waterhouse") appeared Robert F.X. Bohrer, Chief Compliance Officer of Washington Discount Brokerage Corp.

**CASE INFORMATION**

Statement of Claim filed: December 20, 1995.

Claimant's Submission Agreement signed on: December 20, 1995.

Statement of Answer filed by Respondent on: March 7, 1996.

Respondent Washington's Submission Agreement signed on: March 22, 1996.

Respondent Waterhouse's Submission Agreement signed on: March 22, 1996.

**HEARING INFORMATION**

Hearing Dates/Sessions: June 7, 1996 - Two Sessions

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

## CASE SUMMARY

Claimant Donald Arken alleged that, at 9:28 a.m. on December 14, 1995, he placed an order with Washington for a day trade of 11,000 shares of Intel Warrants with a minimum of 5,000 shares at a price of 31 3/8. Donald Arken further alleged that, at 9:50 a.m., he was told that 4,100 shares had been purchased and that respondents were working on the balance of 6,900 shares. Donald Arken asserted that he told Washington that the minimum order was for 5,000 shares and they owed him 900 more.

Donald Arken alleged that the branch manager told him that an error was made and that the trade was broken. Donald Arken also alleged that he understood this to mean that the original order to purchase 11,000 shares was also canceled, but that, at 12:40 p.m. he was informed by Washington that he purchased 5,000 at 10:39 a.m. and 6,000 at 11:50 a.m. at 30 1/2.

Donald Arken alleged that in the 29 previous trades made with Washington they reported back to him within ten minutes and that, in the previous four day trades, if the order was not executed by 10:00 am, he canceled it because of time limit to sell by 3:45 pm. Donald Arken asserted that respondents' Vice President told him that the stock was his because he did not cancel the order for the 11,000 shares and that respondents sold the 11,000 shares and their account was charged with a loss of \$9,369.00.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim. Respondents maintained that Washington executes orders only upon specific instructions from its customers. Respondents further maintained that Washington provided no investment advice and that its account officers are salaried and receive no compensation through commissions.

Respondents maintained that Donald Arken opened a joint brokerage account with Washington on or about August 16, 1995 and that Donald Arken represented himself as a sophisticated investor, well-versed in stock market terminology and procedures. Respondents also maintained that, on December 14, 1996, Donald Arken placed an order to buy 11,000 Intel Step-Up Warrants at a price of 31 3/8 and that he specified that the order was to be good for the December 14 trading day only. Respondents also maintained that the order also carried a requirement that a minimum of 5,000 warrants be executed, otherwise no part of the purchase would be acceptable.

Respondents maintained that Washington informed Donald Arken that 4,100 warrants had been reported to the firm as purchased for his account, however, since the order did not meet the minimum requirement, the market maker who executed the purchase reversed the trade. Respondents further maintained that reversals never affect the status of original orders.

Respondents maintained that the order was filled later that day, but that Donald Arken refused to accept the execution. Respondents further maintained that claimants refused to accept responsibility for the trade and, therefore, a decision was made to liquidate the position in order to limit the loss. Respondents contended that Donald Arken did not cancel the order and that they had no authority to cancel an order without specific instructions.

### **RELIEF REQUESTED**

Claimants requested an award of \$9,369.00, interest and \$200.00 for the arbitration fee.

Respondent requested that the claims be dismissed in their entirety and that claimants be held responsible for all costs associated with the respondents' defense.

### **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. Respondents Washington and Waterhouse be and hereby are jointly and severally liable for and shall pay claimants the sum of \$9,369.00, specifically excluding interest.
2. All other claims are hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$75.00 non-refundable filing fee previously deposited by claimant and has assessed the following forum fees:

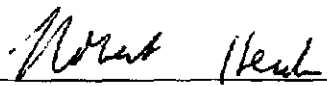
2 hearing sessions x \$200.00 = \$400.00

Claimants be and hereby are liable for the sum of \$200.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$200.00 with the NASD and, therefore, nothing is owed to the NASD by claimants.

Respondents be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$200.00, representing one-half of the total amount of forum fees assessed.

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

ARBITRATOR'S SIGNATURE

  
Robert D. Herschman, Esq.  
Public Arbitrator

Date of decision: July 10, 1996

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

  
Robert D. Herschman, Esq.