

DIS
SIC
PMB

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Edward S. Lisinski

96-00239

Name of Respondents

**Joseph Roberts & Co., Inc.
Michael Knight**

REPRESENTATION OF PARTIES

For Claimant Edward S. Lisinski ("Lisinski"): L. Van Stillman, Esq., Boca Raton, Florida.

**For Respondents Joseph Roberts & Co., Inc. ("JRC") and Michael E. Knight ("Knight"):
Jeffrey S. Rosen, Esq. of the law firm of De Martino Finkelstein Rosen & Virga,
Washington, D.C., until his withdrawal on November 4, 1996, at the direction of JRC
when JRC ceased business activities. Thereafter, JRC and Knight appeared pro se
until Howard S. Weinstein, Esq. of the law firm of Thomas E. Glick, P.A., North Miami,
Florida undertook the representation of Respondent Knight. On July 30, 1997, Mr.
Weinstein withdrew as counsel and Mr. Knight appeared pro se.**

CASE INFORMATION

**Statement of Claim was filed on January 17, 1996. Submission Agreement of Claimant
was signed on November 29, 1995.**

**Statement of Answer was filed by Respondents JRC and Knight on or about April 1,
1996. Submission Agreements of JRC and Knight were signed on April 1, 1996.**

HEARING INFORMATION

**The evidentiary hearing was held on July 22 and August 21, 1997, in Fort Lauderdale,
Florida for a total of two sessions.**

CASE SUMMARY

Claimant alleged that Respondents knowingly made unauthorized trades in equity securities in Claimant's account and failed to carry out the Claimant's instructions to cancel an unauthorized trade resulting in a market loss; that Respondents made an additional unauthorized trade in equity securities in Claimant's account to cover the market loss; and, that Respondents' actions constituted violations of Article III, Sections 1, 18, and 19 of the NASD Rules of Fair Practice.

In their Answer, Respondents denied the allegations set forth in the Statement of Claim and specifically stated that the transactions at issue were authorized; that when the purchase was not paid for in a timely manner, JRC liquidated the position and sold other positions necessary to pay for the debit which resulted from the sellout; and, that all procedures fully complied with the New Account Agreement executed by Claimant upon the opening of his account.

Respondents asserted the affirmative defenses of failure to state a claim, ratification, and that any damages resulted from market price movement wholly beyond the control of Respondents.

RELIEF REQUESTED

Claimant requested an award in the amount of \$3,169.00, pre-judgment interest at the rate of 12% per annum, a loss of profits, attorney's fees, costs, and punitive damages.

Respondents requested a dismissal of the claims against them plus costs, and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. This matter was scheduled to be heard in Philadelphia, PA on October 7, 1996 but was canceled at the request of Claimant's counsel. Thereafter, the Claimant and Respondent Knight agreed to transfer the situs of this matter to Fort Lauderdale, Florida in February 1997 and the undersigned arbitrator was appointed to hear this matter.
2. On July 17, 1997, NASD Regulation, Inc. received a request for an adjournment of the hearing scheduled for July 22, 1997, on behalf of Respondent Knight asserting that Knight had not agreed to the dates scheduled for the matter and that he was out of the country and his counsel was unable to contact him. A decision on that request was deferred until the commencement of the hearing on July 22, 1997.

At the commencement of the hearing on that date, Respondent Knight's counsel appeared without his client. Claimant appeared with his counsel and stipulated with counsel for Knight to proceed with Claimant's portion of the case, subject to additional cross examination and direct examination on Respondent Knight's portion of the case at a future hearing session, and to permit Claimant to appear at any further sessions by telephone if such further testimony was required.

3. As noted in REPRESENTATION OF PARTIES, above, Mr. Weinstein withdrew as counsel for Knight on July 30, 1997. At the same time, Mr. Weinstein made an Emergency Motion for Stay of Proceedings scheduled for August 21, 1997, asserting that Knight continued to be out of the country and that counsel had "been unable to effectuate any meaningful communication with Respondent, Michael Knight and is accordingly unable to adequately defend said client and/or render legal counsel to said client". Claimant opposed the request and it was denied by the undersigned arbitrator.

4. Only counsel for the Claimant appeared at the second hearing session in this matter. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrator determined that Respondent Knight was properly served with the Statement of Claim pursuant to Rule 10302 of the NASD Regulation, Inc. Code of Arbitration Procedure ("Code"). The undersigned arbitrator also determined that Respondent Knight received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

5. The Claimant has 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 Claimant has agreed to receive conformed copies of the award while the original remains on file with the NASD Regulation, Inc. Office of Dispute Resolution.

6. Following the conclusion of the hearing in this matter, NASD Regulation, Inc. was notified that the Claimant dismissed all claims against JRC with prejudice.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Knight is found liable and shall pay to Claimant the sum of \$3,169.00 plus interest at the legal rate from November 10, 1995 to the date of the hearing in the sum of \$615.30 for a total due to Claimant of \$3,784.30.

2. Claimant's requests for attorney's fees, costs, and punitive damages are denied.
3. Respondent Knight's requests for dismissal, costs, and attorney's fees are denied.
4. Respondent Knight shall pay to the Claimant the additional sum of \$100.00 representing reimbursement of the hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

FORUM FEES


Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the arbitrator has assessed forum fees in the amount of \$200.00 (2 hearing sessions x \$100.00 per session).

1. Respondent Knight is assessed the sum of \$200.00, \$100.00 of which shall be paid directly to the Claimant as specified in paragraph 4 of the AWARD section, above, and \$100.00 of which shall be paid to NASD Regulation, Inc.
2. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

Fees are payable to NASD Regulation, Inc.

Arbitrator's Signature



Arthur J. Leibell, Esq.
Public Arbitrator, Presiding Chair

Date of Decision: 10/6/97