

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Yasu and Thelma Ohigashi

96-00392

Name of Respondents

Jason Pollak
George Carhart

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 26, 1996, Claimants Yasu and Thelma Ohigashi, who appeared Pro Se, alleged that Respondents Jason Pollak ("Pollak") and George Carhart ("Carhart") engaged in unauthorized trades in Claimants' account. Claimants further alleged that Pollak sold their holding in F&E Recovery Systems Technology, Inc. ("FERS") and in turn bought shares in Ages Health Services, Inc. ("AGES") without their authorization. Claimants contended that Pollak also engaged in other unauthorized transactions on their account. Claimants further contended that it was their belief that Carhart, as Director of the Board of Westfield Financial Corp., directed Pollak to sell the FERS stock and reinvest the proceeds into AGES. Claimants noted that as of December 1994, Carhart was a Director of AGES. The Claimants asserted that due to the wrongdoing of the Respondents, they suffered damages for which the Respondents should be held liable.

Respondent Jason Pollak, through his representative and counsel Jeffrey S. Rosen, Esq., maintained that the Claimants' account was not discretionary and as such the Claimants controlled their trades and authorized all stock transactions. Respondent further maintained that Claimants' losses were caused by market actions which could not be controlled by Respondent, and were not caused by any error, omission, representation or action of Respondent. Respondent contended that Claimants knowingly assumed the risk of the investments purchased and that they failed to mitigate their damages. Respondent further contended that the Claimants either expressly, or by failure to take action, ratified each and every transaction in their account. Respondent maintained that he had committed no wrongdoing and therefore, the claims against him should be dismissed.

Respondent George Carhart, who appeared Pro Se, maintained that he was never in communication with Pollak in regard to selling the Claimants' position in FERS, and to his knowledge, Pollak never communicated with Claimants. Respondent further maintained that at no time was he ever in communication with the Claimants. Respondent contended that the claim was filed two years after the events complained of and concluded that the Claimants were simply not happy that AGES failed to hold

its price. Respondent further contended that he had committed no wrongdoing and requested that the Claims against him be dismissed.

In a Reply to the Respondents' Answers, Claimants maintained that Carhart's statement that Pollak never communicated with Claimants proved their contention that Pollak made unauthorized trades in their account. The Claimants also denied the Respondents' assertion that their claim was filed two years after the transactions at issue.

RELIEF REQUESTED

Claimants Yasu and Thelma Ohigashi requested \$5,625.00 in actual damages, and \$4,375.00 in punitive damages.

Respondent Jason Pollak requested that the claims of the Claimant be dismissed.

Respondent George Carhart requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Norman Cohen, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Yasu and Thelma Ohigashi on January 19, 1996 by Respondent Jason Pollak on April 15, 1996, and by Respondent George Carhart on May 3, 1996.

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. Respondent Jason Pollak is liable and shall pay to Claimants Yasu and Thelma Ohigashi \$4,150.00 in damages.
2. The claims of Claimants Yasu and Thelma Ohigashi against Respondent George Carhart are dismissed in their entirety.
3. All other relief requests are denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Yasu and Thelma Ohigashi shall be retained by the NASD., Inc.

AFFIRMATION

STATE OF CALIFORNIA

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ss:

COUNTY OF LOS ANGELES

I, NORMAN R. COHEN, 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.



Signature of Arbitrator

DATE OF DECISION:

June 25, 1996