

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Michael Green

96-00401

Name of Respondents

Investors Associates, Inc.
Joseph Langer
Carlos Bertran

REPRESENTATION

For Claimant, Michael Green ("Claimant"), appeared Richard Daniel De Vita, Esq. a sole practitioner located in Hoboken, New Jersey.

For Respondents, Investors Associates, Inc. ("IAI"), Joseph Langer ("Langer") and Carlos Bertran ("Bertran") appeared Lawrence R. Gelber, Esq., of the law firm Beigel Schy Lasky Rifkind Fertik & Gelber located in New York, New York.

CASE INFORMATION

Statement of Claim filed: January 26, 1996

Claimant's Submission Agreement signed on: January 22, 1996

Respondents' Joint Statement of Answer, Motion to Dismiss and for Sanctions filed on: March 13, 1996

Respondent IAI's Submission Agreement signed on: November 26, 1996

Respondent Langer Submission Agreement signed on: November 26, 1996

Respondent Bertran did not execute a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions:

November 26, 1996

Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that Langer and Bertran had been employed by IAI since May 1991, and October 1990, respectively, and that during all relevant times herein Bertran was the branch office manager at IAI. Claimant alleged that on Friday, June 2, 1995, he telephoned Richard Jannarone ("Jannarone"), a broker at IAI, to purchase options for Lotus Development Corporation ("LDC"). Claimant further alleged that Jannarone told him that an account would be opened and the trade placed for him, provided that he settle the transaction within one business day from the trade date. Claimant also contended that he instructed Jannarone to enter an order to purchase five June 95 LDC calls. Claimant further contended that Jannarone advised him of the cost and fees associated with the purchase and that he would enter the order ticket for the LDC calls.

Claimant maintained that Jannarone prepared the New Account Documentation, obtained an account number for him and received Bertran's approval for the account. Claimant alleged that Jannarone requested that the trade ticket be executed, however, Bertran or Langer forgot to enter the trade ticket. Claimant alleged that on Friday, June 2, 1995 he sent a check to IAI by overnight mail in the amount of \$600.00 to cover the cost and fees of the LDC calls. Claimant further alleged that the check was received by IAI on the next business day, Monday, June 5, 1995, and that IAI cashed his check and deposited the proceeds. Claimant maintained that on June 5, 1995, International Business Machine Corp. ("IBM") unexpectedly announced a hostile tender offer for LDC which caused the LDC calls to increase to a weekly closing average of \$27.28.

Claimant asserted that he had no insider information regarding IBM's hostile tender offer for LDC as the Respondents alleged. Claimant asserted that during settlement negotiations, IAI fabricated the issue of insider trading to improperly deny his claim. In addition, Claimant contended that by failing to enter the trade ticket, IAI failed to follow Claimant's instructions and breached its duty to treat Claimant fairly as required by Article III Section 1 of NASD Rules of Fair Practice. Finally, Claimant contended that there was a contractual relationship between himself and IAI that was breached when IAI failed to execute the LDC calls.

Respondents maintained Bertran was employed by IAI since October 1990 and during all relevant times herein was the branch office manager. Respondents maintained that Langer was not the account executive on Claimant's account, and did not have any connection to the parties allegedly involved with the transaction. Respondents contended Jannarone was the registered representative on the account. Respondents contended that IAI does not, as a matter of industry custom, accept options transactions unless there is cash in the account, particularly for new customers. Respondents further contended that the options account form was dated six days after the purported instruction to trade and bears no approval signature of a registered options principal or other supervisory personnel. Respondents asserted Jannarone would have known that he could not accept an order for an options transaction from a stranger with no funds in the account and no approval forms on file. Respondents further asserted that, because the documents Claimant relies on are dated June 8, 1995, Jannarone could not have obtained an account number for Claimant's account or Bertran's approval.

Respondents maintained that the order ticket appears undated and that the trade ticket was not entered by IAI because no approval for the account to trade options existed. Respondents maintained that Jannarone evidently prepared an order ticket, obtained some provisional approval but was prevented from entering the transaction ticket because he was unable to obtain final approval for the transaction. Respondents maintained the check Claimant alleges to have sent on June 2, 1995 was dated June 1, 1995. Respondents maintained that although the alleged transaction totaled \$406.25, Claimant's check was for \$600.00 and was made to payable to Prudential. Respondents contended that because the check was not received and deposited by Prudential until June 6, 1995, and did not clear until June 7, 1995, there was insufficient money in the account to effectuate an options trade until after June 7, 1995.

Respondents alleged Claimant was attempting to trade on inside information. Respondents also that they did not cause any damage to Claimant, nor did they received any benefit or profit from the transaction.

RELIEF REQUESTED

Claimant requested \$14,000 in actual damages; attorney's fees, costs and interest; punitive damages; an enforcement referral to NASD's Division of Enforcement; and any other remedy the panel deems appropriate.

Respondents requested that the Statement of Claim be denied in its entirety; that the respondents be awarded the costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$12,500 and such other and further relief that equity and justice require.

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. Respondent, Investors Associates, Inc., Joseph Langer and Carlos Bertran, are jointly and severally liable, and shall pay to the Claimant One Dollar (\$1.00);
2. Respondents' request for sanctions is denied;
3. All parties are to bear their respective costs, including attorney's fees; and,
4. All other requests for relief are denied.

FORUM FEES

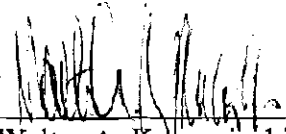
Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Total Forum Fees: \$1,200 (2 Sessions x \$600)

1. Respondents are jointly and severally assessed the sum of \$1,200.00 representing the total forum fees due. Respondents are hereby liable, jointly and severally, and shall pay to NASD Regulation, Inc. the sum of \$1,200.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATOR'S SIGNATURE



Walter A. Kapuscinski
Sole Industry Arbitrator

Date of Decision: March 21, 1997

I, **Walter A. Kapuscinski**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law & Rules, that this is my decision in the above-referenced matter.