

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lina Asseo

96-00589

Name of Respondent

First Union Brokerage Services, Inc.

REPRESENTATION

For Claimant, Lina Asseo ("Asseo"): Mark A. Tepper, Esq., Fort Lauderdale, Florida.

For Respondent, First Union Brokerage Services, Inc. ("FUBS"): Barbara H. Wright, Esq., V.P. and Assistant General Counsel, First Union Brokerage Services, Inc., Charlotte, North Carolina; Paul C. Kunhnel, Esq. of Woods, Rogers & Hazlegrove, P.L.C., Roanoke, Virginia; Ginger K. Patton-Schmitt, Esq. and Michael K. Wolensky, Esq. of Kutak Rock, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed: February 9, 1996.

Claimant's Submission Agreement signed on: January 30, 1996.

Statement of Answer filed by Respondent FUBS on: April 1, 1996.

Respondent FUBS did not execute a Submission Agreement as required by Section 25 of the Code of Arbitration Procedure (see "Other Issues").

HEARING INFORMATION

On July 3, 1996 a Pre-Hearing Conference consisting of one (1) session was held in Fort Lauderdale, Florida.

On July 9, 10, and 11, 1996 in Fort Lauderdale, Florida, hearings lasting six (6) sessions were

conducted.

CASE SUMMARY

Claimant alleged that Respondent accepted a telephone order to liquidate Claimant's brokerage account assets to a third party. Claimant further alleged that Respondent failed to follow customer's oral and written instructions and contradicted customer instructions by transferring investment principle from her brokerage account to a bank account. Claimant further alleged that Claimant's money was wrongfully transferred from her brokerage account to a bank account with a different beneficial ownership. The Claimant also alleged that Respondent's written authorization (Customer Agreement) to transfer funds from her bank account to her brokerage account did not authorize the transfer of Claimant's investment principle or sales proceeds from her brokerage account to a bank account.

Claimant specifically alleged that the Respondent violated the Florida Securities and Investor Protection Act, section 517.301 of the Florida Statutes; engaged in unauthorized trading; breach of fiduciary duty; failure to supervise its registered employees and Claimant's account; wrongful transfer of Claimant's securities in violation of UCC, section 678.315; negligence; and breach of contract.

Respondent denied all liability to Claimant and asserted that there was no factual or legal basis for the claim. Respondent claimed that when Claimant opened her brokerage account, she executed a New Account Application and Customer Agreement and selected the "bank link" feature for her brokerage account. Through the bank link feature, proceeds from Claimant's brokerage account were automatically transferred to her bank account.

Respondent further alleged that in August 1994, FUBS received a phone call from a woman they believed to be Claimant. The caller identified herself as "Lina Asseo," provided her brokerage account number, identified the positions in the account, and then gave instructions to sell the securities. The positions in the account were sold for a total of \$121,187.85, and these proceeds, pursuant to the bank link feature selected by Claimant, were transferred to Claimant's First Union bank account. Claimant, in June 1994, unknown to FUBS, completed an updated account card and added her adult daughter, Andree Tretiakoff, to her bank account. In September 1994, Claimant's daughter wrote three checks and withdrew the proceeds from the sale of Claimant's securities from Claimant's First Union bank account. In March 1995, approximately six months after the liquidation of Claimant's brokerage account, Claimant, through her brother, Guy Landis, complained about these transactions. Respondent alleged that Claimant contended that her daughter had drugged her and kidnapped her to France, had held her captive, and had authorized the liquidation of her brokerage account without Claimant's knowledge or consent.

RELIEF REQUESTED

Claimant requested the following damages:

1. Damages in excess of \$121,187.85
2. Interest at the legal rate from the date of sale to the date the award is paid.
3. Reasonable attorneys fees pursuant to Florida Statutes.
4. Costs, forum fees, and such other relief as is fair and just.

Respondent requested that the panel deny Claimant's claim for damages, that no other relief be entered against Respondent or in favor of the Claimant, that the decision of the panel be rendered in favor of FUBS, and that all fees and costs of the arbitration be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent FUBS did not execute a Submission Agreement as required by Section 25 Code of Arbitration Procedure, FUBS being an NASD member firm at the time the facts giving rise to the controversy occurred.

The parties have 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 parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

AWARD

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

1. Respondent, FUBS is found liable and shall pay to the Claimant the amount of \$121,462.50 for compensatory damages.
2. Respondent, FUBS is further found liable and shall pay to Claimant the amount of \$18,075.70 for interest from September 6, 1994 to April 30, 1996.
3. Respondent, FUBS is further found liable and shall pay to Claimant the amount of \$4,271.21 for interest from April 30, 1996 to September 6, 1996.
4. Claimant's requests for attorneys fees, forum fees, and other costs, other than those described herein are hereby denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed Forum Fees in the amount of \$4,800.00 (six sessions x \$750.00 per session plus \$300.00 for the prehearing conference).

1. Claimant is hereby assessed the amount of \$2,400.00 for which the NASD shall retain the \$750.00 previously deposited by the Claimant in partial satisfaction thereof, leaving a balance due the NASD of \$1,650.00.
2. Respondent is hereby assessed the amount of \$2,400.00, payable to the NASD.
3. The NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
Leo H. Kerns, Esq.

Public/Chairman

_____/s/_____
John Darling

Industry

_____/s/_____
Burt R. Rose

Public

Date of Decision: September 9, 1996