

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John C. White

96-00858

Name of Respondents

National Discount Brokers  
Everett Lang  
Seth Rosen

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 26, 1996, Claimant John C. White ("Claimant"), who appeared Pro Se, alleged that Respondents National Discount Brokers ("NDB"), improperly executed his buy and sell orders. Claimant further alleged that on March 10, 1994, he ordered NDB to sell 400 shares of American Barrick Corporation ("ABX"). Claimant contended that instead of selling ABX shares, NDB instead sold 400 shares of ADX. Claimant further contended that NDB corrected this trade execution error and presumably kept the ensuing profit. Claimant also contended that on March 18, 1994, he attempted to buy 100 shares of MICRON TECHNOLOGIES ("MU") on NDB's QUOTELINE automated telephone service, but was informed that the "order could not be transmitted to the broker." Claimant asserted that 10 days after this event, he was informed that NDB had actually bought 100 shares of MU. Claimant further asserted that on March 30, 1994, he ordered the sale of additional stock on NDB's QUOTELINE system, and was informed that the order had been placed. Claimant alleged that the order had in fact not been placed and was executed at a loss only after he again contacted NDB. Claimant further alleged that on March 30, 1994 he attempted to sell stock using the QUOTELINE service and double checked his instruction. Claimant contended that although his instruction was confirmed, the trades requested were not placed until the following day.

Claimant contended that he immediately initiated contact with Respondent Everett Lang concerning the transactions. Claimant further contended that NDB ignored his complaints until he was sent stocks which NDB wished to retrieve. Claimant also contended that following receipt of the stocks, Seth Rosen began corresponding with him. Claimant further contended that he made numerous unsuccessful attempts to resolve this dispute with NDB and has been illegally charged interest during the interim. Claimant also contended that due to the wrongdoing of the Respondents he has suffered damages for which the Respondents should be held liable.

Claimant alleged that he is a California investor and that on March 6, 1996, a suit was filed in Hudson County Superior Court, Jersey City, New Jersey on behalf of NDB by Mr. Robert Recio ("Recio") of Attorney Robert Mulligan's ("Mulligan") office. Claimant further alleged that the suit was a ploy

intended to force him "to submit to the company's steam roller enforcement tactics" as he could not be expected to handle the litigation from California. In addition, Claimant alleged that Mulligan knew of his intent to submit this dispute to NASD arbitration and that Recio, acting on behalf of Mulligan and NDB, falsely certified to the court that the matter in controversy was not the subject of any other arbitration proceeding now pending or contemplated. Claimant contended that Recio subsequently agreed to withdraw the suit.

Respondents National Discount Brokers, Everett Lang and Seth Rosen, through their representative and counsel David E. Robbins, Esq., of Kaufmann, Feiner, Yamin, Gildin & Robbins located in New York, New York, maintained that Claimant's buy and sell orders were properly executed. Respondents further maintained that Claimant placed a purchase order for 100 shares of MU after the market closed on March 18, 1994, and that this order was properly executed on the next business day. Respondent further maintained that the QUOTELINE system did not inform Claimant that his order could not be transmitted to the broker because its message informs the customer to contact the broker when an order is unclear. Respondent alleged that NDB records do not indicate that it received QUOTELINE orders from Claimant to sell shares of Lennar Corp., Logicon Inc., Mattell Inc., J.C. Penney, Southwest Airlines and SunAmerica Inc., on the evening of March 30, 1994. Respondent further alleged that the disputed orders were placed on March 31, 1994, and were executed within minutes of being received.

Respondents maintained that as to the Lennar Corp. transaction, the Claimant sold the stock with a "due bill" attached and, accordingly, was required to deliver the stock dividend to the selling broker. Respondent further maintained that the due bill arose because although Claimant had sold the shares, he was the holder of record at the time the dividend was declared. Respondent also maintained that as a result of being the holder of record, Claimant was sent the dividend shares of Lennar. Respondent contended that Claimant was required to return those dividend shares to it but has failed to do so. Respondent further contended that Claimant's request for punitive damages is derived from his failure to provide the dividend to it, the selling broker and, therefore, punitive damages should be denied.

Respondent maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

#### **RELIEF REQUESTED**

Claimant John C. White requested \$626.00 in actual damages, \$470.13 in compensatory damages, \$100.00 in interest charges be removed from his account, and \$8,900.00 in punitive damages.

Respondents National Discount Brokers, Everett Lang and Seth Rosen requested that the claims of the Claimant be dismissed. Respondents further requested that the arbitrator assess all NASD fees against the Claimant as well as reasonable attorney's fees incurred to defend this claim. Respondents also requested that the Arbitrator order the Central Registration Depository to expunge all references to this case on the Central Registration Depository records of Respondents Everett Lang and Seth Rosen.

**AWARD**


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Frank Conger Fawcett, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant John C. White on February 21, 1996, Respondent National Discount Brokers on May 13, 1996, by the Respondent Everett Lang on May 13, 1996, and by the Respondent Seth Rosen on April 13, 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. The claims of the Claimant John C. White against Respondents Everett Lang and Seth Rosen are denied in their entirety.
2. The Respondent National Discount Broker is liable and shall pay to the Claimant John C. White \$626.00 in compensatory damages.
3. The Respondent National Discount Broker is liable and shall pay to the Claimant John C. White \$1.00 in nominal damages.
4. The Respondent National Discount Broker is liable and shall pay to the Claimant John C. White interest at California statutory rate on the above from the date of the award until date of payment.
4. The Respondent National Discount Broker is liable and shall pay to the Claimant John C. White punitive damages in the amount of \$2,500.00.
5. Respondents' request to have the CRD records of Respondents Everett Lang and Seth Rosen expunged is denied.
6. All other relief requests are denied.
7. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent National Discount Brokerage is liable and shall pay to Claimant John C. White \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **FRANK CONGER FAWCETT, ESQ.**, 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.

  
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Date of Decision: August 30, 1996

White v. National Discount Brokers, et al.  
NASD Arbitration No. 96-00858

ARBITRATOR'S AWARD

Claimant's Actual-Damage Claims.

1. Micron Technologies claim. For Claimant, against National Discount Brokers ("NDB"), in the sum of \$626.00. Claimant may, as Respondents say, have misunderstood what the recorded Quoteline message said; but the gist of the message which Respondents say he heard, that the "status of [the] order [was] unclear" and that it was necessary for the caller to "contact your broker," would connote to the average listener, at the least, that the order was not placed and would not be placed until that "contact" was made.

2. Sale of six stocks, 3/30-31. For Claimant, against NDB, in the sum of \$1.00. Again there is a dispute about the functioning of the Quoteline system. It is difficult, however, to believe that Claimant simply made up a story about the system functioning the way it was supposed to function. There is also a dispute as to the amount of damages (if any) resulting, including confusion (or not) over bid and ask prices, which dispute the parties' pleadings fail adequately to address or resolve. What appears dispositive, however, is the fact that, once in telephone contact with the NDB broker, Claimant did place the six orders. This fact would seem to reduce Claimant's damages, for the Quoteline malfunction, to a nominal sum.

Respondents' "Non-Counterclaim".

It is curious that Respondents, already brought into formal arbitration, elected not to file a counterclaim for a sum ostensibly close to twice the amount of the filing fee. However, that was their choice; and, their having elected not to avail themselves of the NASD arbitration procedures, that is the end of it. No award.

Complainant's Request for Punitive Damages.

Respondents clearly intend to reap financial benefit from their Quoteline system, and so bear responsibility for making it work and consequences when it does not work. As found above, it did not work properly for the Micron order (either an order is placed or it is not; the customer should not have to call to "cancel" an order which he is led to believe could not be placed). Respecting the second transaction, which Claimant says the recorded message told him had been duly placed, Respondents' attorneys assert that "no records" or "evidence" of any such (Quoteline) order exist. However, NDB's Seth Rosen, in his letter to the SEC of August 29, 1994, states that the orders were placed by the Quoteline system but "were not 'taken' by the system." Thus (accepting Mr. Rosen's statement) there is presented the picture of a system which, in the first instance, says (or certainly intimates) that an order has not been placed, then nevertheless places and executes it; and, in the second instance, says that an order has been placed, then does not "take" it. This alone -- and ignoring the business about the New Jersey small-claims suit -- indicates the propriety of an award of exemplary damages. Accordingly, an award of punitive damages, to Claimant and against NDB, is made in the sum of \$2,500.00.

Individual Respondents.

No basis appears for an award against either Mr. Lang or Mr. Rosen personally. (However, their request for "expungement" of their involvement in the case is denied.)