

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert & Carol Torns, as Trustees for the
Torns Living Trust

96-00991

Name of Respondent

National Discount Brokers

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 5, 1996, claimants Robert Torns and Carol Torns, as Trustees for the Torns Living Trust ("claimants"), who appeared Pro Se, alleged that on May 9, 1995 they placed an order to sell 100 shares of Presstek stock ("PRST") through National Discount Brokers' ("respondent") automated phone system. Claimants further alleged that they spoke with a broker later that same day and changed the sell order from 100 shares to 50 shares. Claimants also alleged that the broker confirmed that the automated order for 100 shares "was not in the system". Claimants contended that respondent sold 150 shares although the broker confirmed that 150 shares could not be sold. Claimants further contended that she called respondent and was assured that the 100 shares, which were sold in error, would be reinstated to the account. Claimant also contended that there was a subsequent 2.1 stock split; therefore, the account should reflect 200 PRST. Claimants asserted that they repurchased 200 PRST for \$10,540. Claimant further asserted that the stock split and 200 PRST repurchase should bring the total number of shares in the account to 350. Claimants also asserted that their account was credited with \$7,886.87 and was told that the request to reinstate the shares, had been denied. Claimants alleged that respondent is liable for the difference between the sale and purchase prices of PRST.

Respondent National Discount Brokers ("respondent"), through its Compliance Director, Karen Merker, maintained that as of May 1, 1995, the claimant's account reflected 225 PRST. Respondent further maintained that on May 9, 1995, the following transactions took place: At 8:34 a.m., prior to market opening, claimants placed a good-till-canceled order to sell 50 shares; At 8:38 a.m., a second good-till-canceled sell order for 100 shares; and, at 10:30 a.m., executed two sell orders. Respondents also maintained that there was a balance of 75 PRST in claimant's account by the close of business day. Respondents contended that claimants received confirmation of the sales by telephone and mail. Respondents further contended that on May 31, 1996, there was a two for one PRST stock split with claimant's shares totalling 150.

Respondents also contended that they received a written complaint from claimant on June 8, 1995, and as a result of the complaint, reversed the sell order for 100 PRST. Respondent asserted that the investigation into the complaint concluded that claimant did not make a request to cancel. Respondent also asserted that buy and sell orders are recorded on the Daily Trade Activity Log. Respondents maintained that the Daily Trade Activity Log reflects claimant's sell order, but no cancellation. Respondents further maintained that the sell order for 100 PRST was reinstated.

In response to the Statement of Answer, claimant alleged that the cancellation of 100 PRST was done through an individual. Claimant also alleged that the public knew about the stock split before the May 9, 1996 sale. Claimant contended that respondent's automated system made "double purchases" in the past, which had to be reversed.

RELIEF REQUESTED

Claimant Robert Torns and Carol Torns, as Trustees for the Torns Living Trust requested \$2,653.13 in actual damages, plus \$155.00 in costs.

Respondent National Discount Brokers requested that all claims be dismissed, plus costs.

AWARD

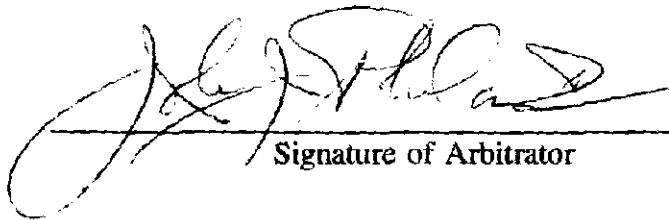
Pursuant to Section 10302 of the NASD Regulation, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John J. Phelan, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Robert Torns and Carol Torns, as Trustees for the Torns Living Trust, on March 15, 1996 and by Respondent National Discount Brokers on April 20, 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 National Discount Brokers is liable and shall pay to the Claimant Robert Torns and Carol Torns as Trustee for the Torns Living Trust, \$2,653.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robert Torns & Carol Torns, as Trustees for the Torns Living Trust, shall be retained by the NASD, Inc. Respondent National Discount Brokers is liable and shall pay to the Claimant Robert Torns & Carol Torns, as Trustees for the Torns Living Trust \$125.00 as reimbursement of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, JOHN J. PHELAN, ESQ., do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, who executed this instrument, which is my award.

A handwritten signature in dark ink, appearing to read "John J. Phelan", is written over a horizontal line. The signature is fluid and cursive.

Signature of Arbitrator

DATE OF DECISION: December 6, 1996