

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Greenhouse Agency Profit Sharing Money Purchase Plan

96-01101

Name of Respondents

Brokers Exchange, Inc.  
Donald B. Harris

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on March 13, 1996, claimant Greenhouse Agency Profit Sharing Money Purchase Plan ("claimant") through its trustees Lewis and Glenda Greenhouse alleged that respondents Brokers Exchange ("Brokers") and Donald Harris ("Harris") "lost" money that they had issued for an investment. Claimant further alleged that on March 6, 1991, they issued a check made payable to Brokers. Claimant also alleged that the plan's administrator Penact and Associates ("Penact") noticed that the investment was not being reported on the account statements. Claimant asserted that Penact contacted the broker, John Zimmerman ("Zimmerman"), who informed them that the money had been placed in a Cash Equivalent Fund ("CEF") account and that it would be transferred to an Alliance Money Market Fund ("Alliance"). Claimant further asserted that shortly thereafter, Zimmerman passed away and Alliance did not have any record of receiving the funds. Claimant also asserted that the plan's current financial advisor, Michael Travis ("Travis") has been trying to locate the lost money since January 1995. Claimant contended that Travis had spoken to Kemper funds who handles the CEF account and found out that the CEF is a pooled brokerage account and that they are not able to locate an account under the Greenhouse tax identification number. Claimant further contended that Travis has been in contact with the president of Broker, Harris who had been unsuccessful in locating the money in the CEF account. Claimant also alleged that Harris reviewed Broker's checking account and has been unable to show that the original investment was ever made.

Respondents Brokers Exchange, Inc. and Donald Harris, who appeared Pro Se, maintained that the check was actually deposited in the account of Zimmerman Enterprise in Richmond, Virginia. Respondents further maintained that neither Broker or Harris saw this check or knew of its existence until Mr. Greenhouse's financial advisor contacted them. Respondents also maintained that they went to the bank in Richmond with a copy of the check and learned that it had been deposited by Zimmerman Enterprises. Respondents contended that they advised Mr. Greenhouse's financial advisor that Zimmerman's estate was still open and that there was sufficient money to cover their losses if they believed Zimmerman had taken the money. Respondents further contended that their financial advisor told them that Zimmerman was a good friend of Mr. Greenhouse and that he did not want to make a claim against the estate.

**RELIEF REQUESTED**

Claimant Greenhouse Agency Profit Sharing Money Purchase Plan requested \$7,177.03

Respondents Broker Exchange and Donald Harris requested that the claims of claimant be dismissed in their entirety.

**AWARD**

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Arnald B. Crews, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Greenhouse Agency Profit Sharing Money Purchase Plan & et al. on January 4, 1996. Respondents did not file Uniform Submission Agreements as required by Rules 10301 and 10302 of the Code of Arbitration Procedure

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. Respondents Brokers Exchange, Inc. and Donald Harris be and hereby are jointly and severally liable and shall pay claimant the sum of \$7,177.03.
2. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc. Respondents Brokers Exchange, Inc. and Donald Harris be and hereby are jointly and severally liable and shall pay claimant the sum of \$150.00 as reimbursement of the filing fee.
3. All other relief requests are denied.

**AFFIRMATION**

I, Arnald B. Crews, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described therein and who executed this instrument, which is my oath and award.



Arnald B. Crews, Esq.

Date of Decision: March 6, 1997