

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Chuan-Yi Xu

NASD CASE NO. 96-01104

Name of Respondent

Securities Research, Inc.

REPRESENTATION

For Claimant: Susan L. Donegan, Esq., Boston, Massachusetts. On June 6, 1996, NASD Regulation, Inc. received a letter from counsel stating that she no longer represented Claimant in this matter. Claimant appeared pro se at the evidentiary hearing of this matter.

For Respondent: Layne Verebay, Esq. of Freedman & Verebay, P.A., North Miami, Florida.

CASE INFORMATION

Statement of Claim filed on March 13, 1996. Claimant's Submission Agreement signed on November 17, 1995.

Statement of Answer with Affirmative Defenses filed by Respondent on April 25, 1996. Respondent did not file an executed Submission Agreement.

HEARING INFORMATION

On February 4, 1998, in Tampa, Florida, hearings lasting two (2) sessions were conducted.

CASE SUMMARY

Claimant alleged that he suffered damages caused by the Respondent's failure to exercise proper supervisory authority over its employees, under the legal principles of agency and federal and state securities laws. Claimant further alleged that Respondent was negligent and failed to execute a securities order placed by Claimant in violation of state and federal securities laws. Claimant specifically alleged the following: that on or about 9:50 a.m. on November 18, 1992, Claimant entered a limit order with Philip Stambaugh ("Stambaugh"), an employee of Respondent, to short sell 500 shares of Andrea Electronics Corp. ("AND") at 20 7/8 per share; that on the same day, when the price of AND dropped to 18 3/4, Claimant told Stambaugh to buy back the 500 shares of AND he had shorted; that Stambaugh told Claimant it was not possible to buy back the shares because the previous short order had not been confirmed; that on November 20, 1992, Brandon Ackerman ("Ackerman"), branch manager for the Respondent, called the Claimant to tell Claimant that he had received the November 18th time and sales

information pertaining to AND; that during the telephone conversation, Ackerman told Claimant that someone had "screwed up" the order shorting AND at 20 7/8 and that Ackerman offered to have Respondent pay the difference between 19 1/4 and 20 7/8 to Claimant; that a few days later, Ackerman withdrew the offer and asserted that any mishandling of the order was by the specialist of AND at the American Stock Exchange; and, that the American Stock Exchange review showed that despite delays in reporting due to heavy trading, an erroneous report was not issued by the specialist but instead by the firm handling Claimant's order.

Respondent denied the allegations of wrongdoing contained in the Statement of Claim and asserted that the only issue presented to the Panel was whether Respondent properly executed the short sale of 500 shares of AND on November 18, 1992. Respondent maintained that the short sale was properly placed and further asserted that any damages resulting to the Claimant was based upon his voluntary choice to hold onto his short position of AND. Respondent asserted the following affirmative defenses: bar by statute of limitations, failure to act with due diligence, failure to mitigate damages and assumption of risk.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$28,562.50 plus pre-award interest, punitive damages, attorneys' fees, costs and such further relief as deemed just and proper by the Panel.

Respondent requested that the arbitration panel deny the relief sought by the Claimant in its entirety. The Respondent further requested an award of reasonable attorneys' fees pursuant to Florida Statute §17.211, arbitration costs and such other relief as deemed proper by the Panel.

OTHER ISSUES CONSIDERED & DECIDED

1. 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 originals remain on file with NASD Regulation, Inc.

2. Respondent did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code of Arbitration Procedure (the "Code"), and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's Statement of Claim is dismissed in its entirety.
2. All other claims for relief, including Claimant's request for punitive damages and the parties' requests for attorneys' fees and costs, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the Panel has assessed forum fees in the amount of \$800.00 (two sessions x \$400.00 per session) as follows:

1. Claimant is assessed the sum of \$400.00 for which NASD Regulation, Inc. shall retain the \$400.00 hearing session deposit previously paid by Claimant in full satisfaction thereof.
2. Respondent is assessed the sum of \$400.00.
3. Respondent is liable and shall pay to NASD Regulation, Inc. the sum of \$200.00 representing the member surcharge due and owing pursuant to Rule 10333 of the Code.
4. Respondent is also liable and shall pay to NASD Regulation, Inc. the sum of \$400.00 representing the fee for the postponement of the June 18, 1997 scheduled hearing date.
5. NASD Regulation, Inc. shall retain the \$100.00 claim filing fee previously paid by the Claimant.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
James F. Turner, III
Chairperson

Public

_____/s/_____
Ruth C. Adrian

Public

_____/s/_____
Thomas R. Carlson

Industry

Date of Decision: May 15, 1998