

NASD REGULATION AWARD

NASD REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Steven Friedel

96-01539

Name of Respondent

Pershing / Div. of DLJ Securities Corp.

REPRESENTATION

For Claimant Steven Friedel ("Claimant") appeared Sidney A. Weisberg, Esq., located in Great Neck, New York.

For Respondent Pershing Division of Donaldson, Lufkin & Jenrette Corporation ("Respondent") appeared Joseph DaProcida, Esq. of the law firm of Wexler & Burkhart, P.C., located in Mitchel Field, New York.

CASE INFORMATION

A Statement of Claim was filed on April 5, 1996. Claimant's Submission Agreement was signed on April 6, 1996.

A Statement of Answer and Counterclaim was filed by Respondent Pershing Division of Donaldson, Lufkin & Jenrette, Corporation on June 27, 1996. Respondent Pershing Division of Donaldson, Lufkin & Jenrette Corporation's Submission Agreement was signed on June 27, 1996.

Claimant's Reply to Counterclaim was filed on November 30, 1996.

HEARING INFORMATION

Pre-Hearing Conference: January 9, 1997 - One Session

Hearing Date/Sessions: January 20, 1997 - Two Sessions

The hearing was held at the City Mid-day Club, 140 Broadway, 50th floor, located in New York City, New York.

CASE SUMMARY

Claimant maintained an account with Pershing Division of Donaldson, Lufkin & Jenrette Corporation's Personal Control Financial Network (hereinafter "PCFN"). Claimant stated that on November 29, 1995 at approximately 9:15 he placed an order for 1000 shares of Pixar at the market. Claimant further stated that at about 11:00 a.m., he contacted PCFN to cancel the trade since the trade had not yet been

executed. At 11:17 a.m., respondent supposedly notified claimant that they were unable to cancel the trade even though respondent had not executed the trade.

Claimant contended that at 12:46 p.m. on that day, respondent executed the trade at 49 1/4. Claimant argued that the transaction was not executed at the market since the price had been falling at the time.

According to claimant, respondent demanded claimant pay the sum of \$29,361.94 for the transaction. Claimant stated he had advised respondent that he had timely and properly canceled the trade and that they should not have executed the trade.

On December 6, 1995 respondent sold the 1000 shares of Pixar for \$29,295.00 and 1000 shares of AWG (Alliance World Government Fund) for \$12,129.59 to cover the trade. Claimant claimed that the sale of AWG was without his consent, permission or authorization.

PCFN's system allows its customers to place orders on-line through the "Prodigy" system. On or about August 8, 1991 claimant executed a Customer Agreement which allegedly a) acknowledged that he was responsible for any purchases he made; b) granted Pershing a lien over the securities held in his account; c) authorized Pershing to demand payment for transactions or additional collateral at any time, in its discretion; d) authorized Pershing to sell, in its discretion, and without notice to him, any securities in any account in which he had an interest and e) agree to pay any resulting delinquent balance.

Respondent agreed with claimants recitation of the pertinent facts of November 29 and stated that on December 4 they contacted the claimant to tell him that it was the settlement date and asked him for payment. Respondent maintained that claimant indicated a check was in the mail. Respondent further maintained that claimant was contacted on December 6, and claimant again stated that he was making payment for the trade.

According to respondent, claimant was informed on December 6 that they would be forced to liquidate securities in his account if funds were not received when he indicated he would not be paying for the stock.

Respondent denied that they sold 1000 shares of AWG without consent, permission or authorization of claimant nor that they had no legal justification for the sale.

Respondent put forth a counterclaim alleging breach of a written contract and breach of oral contract.

Claimant responded to the counterclaim and argued that he did not breach his agreement since he only agreed to pay for trades which were executed in accordance with his instructions. Claimant further argued that he did not enter into a separate oral contract with respondent and there was no consideration for any oral agreement as alleged.

RELIEF REQUESTED

Claimant requested \$12,129.59 and interest from December 9, 1995 plus the cost of arbitration.

Respondent requested \$10,391.32 + 9% per year from December 6, 1996 plus costs of collection, attorney's fees, filing fees and forum fees.

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. Claimant's claims are denied in their entirety.
2. Claimant be and hereby is liable to respondent in the amount of \$8,000 on respondents counterclaim, margin and statutory interest specifically excluded.
3. Each party shall bear its own fees, including attorney's fees.

FORUM FEES

The arbitrators have determined that NASD Regulation shall retain claimant's \$100.00 non-refundable filing fee and respondent's \$500.00 non-refundable filing fee and have assessed the following forum fees pursuant to Rule 10332(c) of the Code of Arbitration Procedure:

1 Pre Hearing Conference x 300.00	\$ 300.00
2 Hearing Sessions x 600.00	<u>\$1200.00</u>
Total due	\$1500.00

The arbitrators have determined to assess 50% of the forum fees against claimant and 50% against respondent. Therefore claimant be and hereby is liable and shall pay to NASD Regulation the sum of 750.00 less \$400.00 hearing session deposit, net \$350.00 due.

Therefore respondent be and hereby is liable and shall pay to NASD Regulation the sum of \$750.00 less \$600.00 hearing session deposit, net \$150.00 due.

Fees are payable to NASD Regulation Inc.

ARBITRATORS' SIGNATURES



Karimu Hill-Harvey, Esq.
Public Chairperson

Date of Decision 4/7/97

Kenneth Felder
Public Panelist

E. Stephen Walsh
Industry Panelist

I, Karimu Hill-Harvey, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Karimu Hill-Harvey, Esq.
Public Chairperson

I, Kenneth Felder, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

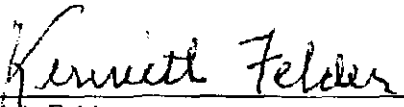
Kenneth Felder
Public Panelist

I, E. Stephen Walsh, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

E. Stephen Walsh
Industry Panelist

ARBITRATORS' SIGNATURES

Karimu Hill-Harvey, Esq.
Public Chairperson



Kenneth Felder
Public Panelist


Date of Decision 4/7/97

E. Stephen Walsh
Industry Panelist

I, Karimu Hill-Harvey, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Karimu Hill-Harvey, Esq.
Public Chairperson

I, Kenneth Felder, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Kenneth Felder
Public Panelist

I, E. Stephen Walsh, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

E. Stephen Walsh
Industry Panelist

ARBITRATORS' SIGNATURES

Karimu Hill-Harvey, Esq.
Public Chairperson

Kenneth Felder
Public Panelist

E. Stephen Walsh
E. Stephen Walsh
Industry Panelist

Date of Decision 4/7/97

I, Karimu Hill-Harvey, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Karimu Hill-Harvey, Esq.
Public Chairperson

I, Kenneth Felder, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Kenneth Felder
Public Panelist

I, E. Stephen Walsh, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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