

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael T. Dowling

96-01832

Name of Respondents

Thomas Deceglie
Shannon Johnson
Kevin Williams
Michael Haefling
Joe Huff
Marco Fiore
Thomas DeSimone
Nationwide Securities Corp.

REPRESENTATION

Claimant Michael T. Dowling ("Claimant") appeared pro se.

Respondent Thomas DeCeglie ("DeCeglie") appeared pro se.

Respondent Shannon Johnson ("Johnson") did not appear.

Respondent Kevin Williams ("Williams") did not appear at the hearing.

Respondent Michale Haefling ("Haefling") appeared pro se.

Respondent Joe Huff ("Huff") did not appear at the hearing.

For Respondents Marco Fiore ("Fiore") and Thomas DeSimone ("DeSimone") appeared Jamie C. Rosenberg, Esq., located in New York City, New York.

Nationwide Securities Corp. ("Nationwide") did not appear.

CASE INFORMATION

The Statement of Claim was filed on April 23, 1996. An amendment to the Statement of Claim was filed on September 12, 1996. Claimant's Submission Agreement was signed on April 24, 1996 and amended on September 27, 1996.

A Statement of Answer was filed by Respondent Thomas DeCeglie on July 24, 1996.
Respondent Thomas DeCeglie's Submission Agreement was signed on August 20, 1996.

Respondent Shannon Johnson did not file a Statement of Answer.
Respondent Shannon Johnson did not file a Uniform Submission Agreement.

A Statement of Answer was filed by Respondent Kevin Williams on August 23, 1996.
Respondent Kevin Williams' Submission Agreement was signed on August 20, 1996.

A Statement of Answer was filed by Respondent Michael Haeffling on August 23, 1996.
Respondent Michael Haeffling's Submission Agreement was signed on August 20, 1996.

A Statement of Answer was filed by Respondent Joe Huff on August 23, 1996.
Respondent Joe Huff's Submission Agreement was signed on August 23, 1996.

Respondent Marco Fiore did not file a Statement of Answer.
Respondent Marco Fiore did not file a Uniform Submission Agreement.

Respondent Thomas DeSimone did not file a Statement of Answer.
Respondent Thomas DeSimone did not file a Uniform Submission Agreement.

Respondent Nationwide Securities Corp. did not file a Statement of Answer.
Respondent Nationwide Securities Corp. did not file a Uniform Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: January 20, 1997 - 2 Sessions

The hearing was held at the office of the NASD located in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that on March 8, 1996 DeCeglie called and suggested he sell common stock of THMZ and buy warrants. Claimant stated he called him back and told him not to sell anything. On March 11, 1996, claimant stated he called to inquire about the status of his account and discovered he had 8,000 shares of LBYGF in his account, the purchase of which he did not authorize. He claimed he told DeCeglie to cancel the purchase since he did not authorize it. Allegedly DeCeglie said he would sell the LBYGF shares and make claimant 1/8 point. Claimant claimed to have called back on the 12th to confirm that the purchase had been canceled and discovered it was still in his account. Claimant argued he called compliance and spoke with Johnson about the situation and asked that the LBYGF purchase be canceled and that they sell his 6,000 shares and 4,000 warrants of THMZ at 5-1/2 and 3-1/8 respectively and to federal express the funds to him.

On March 14, claimant contended he called Johnson to confirm his instructions had been executed; his secretary confirmed this was taken care of. Claimant contacted Johnson on March 18 and Johnson allegedly said he had not yet executed claimant's instructions. According to claimant, by March 27 DeCeglie had received Johnson's letter of March 18, which incorrectly stated that March 18 was the first contact between claimant and Johnson. Further, on March 27 DeCeglie and claimant were on the phone with Johnson when claimant told Johnson that DeCeglie had made an unauthorized purchase of 8,500 shares of GJCOW. Allegedly DeCeglie admitted the purchase was a mistake and agreed to cancel it.

Claimant asserted that as of April 1, 1996 none of his instructions had been executed, Johnson said he could not sell the stock since he was not a broker and Johnson told claimant to call Mark Thearog.

Manager of the firm.

Claimant argued that DeCeglie, knowing claimant had taped the conversations, promised to sell the shares and warrants at the March 18 price and to cancel the GJCOW and LBYGF purchases but stated that the home office had stopped all trades.

Claimant stated he wrote to Williams, the Compliance Officer, on April 3 and never received a response despite several phone calls. Claimant claimed to have spoken to Haefling who stated that they were firing all brokers and managers who had made unauthorized trades but that the branch was an independent contractor. Claimant allegedly told Williams that DeSimone was working with DeCeglie and that some brokers were not licensed.

Claimant contended he spoke to Huff, another compliance officer, who confirmed what Haefling told him. Huff and Williams did not respond to claimant's calls even after Williams allegedly told a NASD employee he would call claimant back.

Claimant also alleged that Gary Walk, manager of Nationwide Securities Corp. in Florida, where claimant's account had been transferred, allegedly told claimant the unauthorized purchase could not be canceled and that if he filed an arbitration they would transfer his account.

Huff denied all allegations of wrongdoing asserted in the Statement of Claim. Huff maintained that he was an officer of Nationwide but that he did not have any supervisory authority over claimant's broker and that he did not speak to claimant prior to April 3, 1996. Huff argued that claimant did not mitigate any damages he allegedly suffered.

DeCeglie denied all allegations of wrongdoing asserted in the Statement of Claim. DeCeglie maintained he had no knowledge of claimant's claims, as he had never serviced, had knowledge of or spoke to claimant until being served with Statement of Claim. DeCeglie further maintained that as of January 1996 he had ceased doing retail business and as of March 1996 he resigned from his sales assistant position. DeCeglie claimed to have called claimant and that claimant admitted that it was not DeCeglie's voice on the tape recording. DeCeglie argued that someone was using his name without his knowledge or consent. He further argued that if someone who had spoken to claimant had advised him of the complaints he could have investigated the situation. As affirmative defenses, respondent DeCeglie maintained claimant failed to state a cause of action; any demand for damages is improper as a matter of law and without foundation as a matter of fact; Respondent DeCeglie is not the proximate cause of damages to claimant and DeCeglie did not control the persons responsible for alleged damages to claimant.

Respondents Williams and Haefling, officers of Nationwide Securities Corp in Fort Worth, Texas, maintained that they did not speak to claimant prior to April 3 and do not have direct supervisory authority over the broker in New York. Therefore, they argued they can not be liable under the theory of failure to supervise. Further they argued claimant had a duty to mitigate his damages.

RELIEF REQUESTED

Claimant requested total damages as follows:

6,000 shares THMZ 5-1/2	= \$33,000.00
4,000 shares THZW 3-1/8	= \$12,720.00
8,500 shares CJCOW 1-3/8	= \$11,692.25
Cash in Money Market account	= \$ 500.00

Total	= \$46,192.25
Punitive damages	= \$50,000.00
TOTAL	= \$96,192.25

Respondent Huff requested dismissal of the Statement of Claim.

Respondent DeCeglie requested dismissal of the Statement of Claim.

Respondents Kevin Williams and Michael Haeftling requested that the Statement of Claim be dismissed as it related to each of them individually.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrators made the following rulings concerning Shannon Johnson , Kevin Williams, Joe Huff and Nationwide Securities Corp. who failed to submit a Submission Agreement and/or did not appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Nationwide Securities, Corp. was a member of the NASD at the time this controversy arose and consequently the panel found jurisdiction over Nationwide Securities Corp.
3. The panel found that Marco Fiore, Thomas DeSimone, Joe Huff, Kevin Williams and Shannon Johnson were associated persons of a member of the NASD at the time this controversy arose and therefore, the panel found personal jurisdiction over Marco Fiore, Thomas DeSimone, Joe Huff, Kevin Williams and Shannon Johnson pursuant to Rule 10301 of the Code.
4. In view of (2) and (3) above, the panel found that Nationwide Securities Corp. Marco Fiore, Thomas DeSimone and Shannon Johnson were required to file with the NASD a properly executed Submission Agreement and Statement of Answer pursuant to Rule 10314 (b) of the NASD Code of Arbitration Procedure.
5. In accordance with Rule 10310, 10315 and 10318 of the Code, the panel found that the NASD provided Shannon Johnson, Kevin Williams, Joe Huff and Nationwide Securities Corp. with due notice of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without Respondents Shannon Johnson and Nationwide Securities Corp. whose absences were unexcused.

Respondent Marco Fiore and Thomas DeSimone's Motion for a Directed Verdict was denied by the panel.

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 original remain on file with the NASD.

AWARD

After considering the pleadings, 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. Nationwide Securities Corp., Kevin Williams and Joe Huff be and hereby are jointly and severally liable and shall pay to claimant \$10,000.00 plus 12% interest to accrue 30 days from date of award.
2. Nationwide Securities Corp. be and hereby is liable to claimant in the amount of \$10,000.00 in punitive damages pursuant to Bonar vs. Dean Witter Reynolds 835 F.2d 1378 11th cir. 1988.
3. Claimant be and hereby is liable to Thomas DeSimone and Marco Fiore in the amount of \$3,000.00 in attorneys' fees pursuant to O.C.G.A. 9-15-14.
4. Claimant be and is hereby liable to Michael Haefling, Thomas DeCeglie, Thomas DeSimone, and Marco Fiore for \$500.00 each for costs.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by the claimants. Furthermore, the following forum fees are assessed:

2 hearing sessions x \$500.00 = \$1,000.00

Total outstanding = \$1,000.00

The arbitrations have determined to assess one-half the cost of arbitration against claimant and one-half the cost of arbitration against respondents Nationwide Securities, Williams and Huff, jointly and severally.

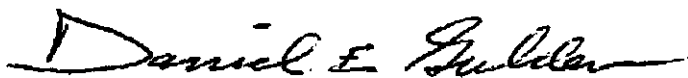
Therefore claimant be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$500.00 which represents one-half the cost of arbitration less \$500.00, which represents the hearing session deposit previously remitted by claimant, net \$0 due.

Therefore respondents Nationwide Securities Corp., Williams and Huff be and hereby are jointly and severally liable and shall pay \$500.00.

Fees are payable to NASD Regulation, Inc.

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ARBITRATORS' SIGNATURES



Daniel E. Gulden, Esq.
Public Chairperson

Date of Decision March 27, 1997

F. John Hermann
Industry panelist

Richard C. Murphy
Public panelist

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Daniel E. Cullen, Esq.
Public Chairperson

F. John Hermann
F. John Hermann
Industry panelist

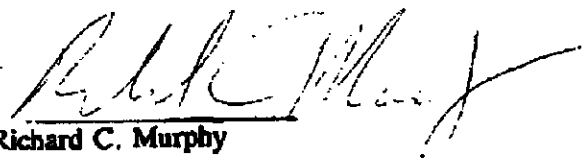
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