

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert M. Brent

96-01838

Name of Respondents

Monica Plocki
Capital Securities of America, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 29, 1996, Claimant Robert M. Brent ("Claimant"), who appeared Pro Se, alleged that Respondents Monica Plocki ("Plocki") and Capital Securities of America, Inc. ("CSA") fraudulently dealt with her account to her detriment. Claimant further alleged that he entered into an oral agreement to purchase 2000 shares of Progressive Polymetrics International ("PPI") with Plocki on November 16, 1995 contingent upon her: 1) sending a copy of a published magazine article describing her in a successful brokerage transaction; 2) providing a list of current clients as references; 3) sending information concerning her position at CSA; and, 4) sending information (a prospectus) on PPI. Claimant also alleged that Plocki failed to fulfill all of the aforementioned conditions, thereby avoiding the contract. Claimant contended that on November 21, 1995 he received purchase orders for the 2000 shares and remitted a check for the amount due because he believed that Plocki would be sending the requested information the following day. Claimant further contended that on November 22, 1995 he canceled the check because he did not receive the information. Claimant also contended that he owned shares of Toys R Us which were sold without authorization to cover the costs of the PPI transaction. Claimant further contended that although the proceeds from Toys R Us did not cover the PP costs, Respondents did not bill him for the difference which further supports his claim. Claimant asserted that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent Capital Securities of America, Inc., through its representative and President, Jerry Cline, maintained that Claimant authorized Plocki to purchase 2,000 shares of PPI on November 16, 1995. Respondent further maintained that Claimant sent a check to cover this transaction

which was canceled. Respondent also maintained that Claimant was sent a prospectus for PPI and has not challenged the suitability of this investment, therefore, that contingency has been satisfied. Respondent further maintained that the remaining contingencies have no relevancy to the purchase but merely concern his relationship with Plocki. Respondent also maintained that on December 7, 1995, Claimant informed John Weston, its Operations Manager, that he had authorized the purchase and the Weston informed him that he had to pay for the trade or it would sell his Toys R Us stock. Respondent contended that Claimant agreed to replace the check and never did, so on December 12, 1995, it liquidated Claimant's Toys R Us stock in accordance with the new account form authorizing this remedial measure. Respondent also contended that as a result of the above, it should not be held liable.

Respondent Monica Plocki through her representative, John E. Lawlor, Esq., a sole practitioner located in Mineola, NY, maintained that Claimant authorized the PPI trade. Respondent further maintained that during the conversation in which the trade was authorized, Claimant requested that she provide references. Respondent contended that the reference information requested by Claimant was delayed because CSA had to approve all outgoing correspondence. Respondent also maintained that since Claimant sent in a check he implicitly acknowledged authorization for the trade. Respondent further contended that Claimant's Toys R US stock was sold to cover the debit in the account, and that his account was handled in accordance with all applicable rules. Respondent also contended that as a result of the above, she should not be held liable.

RELIEF REQUESTED

Claimant requested \$2,404.00 in actual damages, punitive damages and costs.

Respondents Capital Securities of America, Inc. and Monica Plocki requested that the claims of be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Theodore A. Griffinger, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 22, 1996 and by Respondents Monica Plocki on July 31, 1996 and Capital Securities of America, Inc. on June 14, 1996

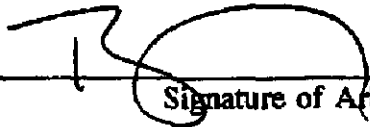
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Robert Brent against Respondents Capital Securities of America, Inc. and Monica Plocki are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$ 50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **THEODORE A. GRIFFINGER, JR.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature, appearing to be 'T. Griffinger', is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION:

September 6, 1996

STATEMENT OF DECISION

NASD CASE NO. 96-01838

This claim is by Dr. Robert M. Brent ("Dr. Brent") against Monica Plocki ("Plocki") and Capital Securities of America ("Capital"). The claim by Dr. Brent is for unauthorized trading in the form of the purchase in his account of 2,000 shares of a company called Progressive Polymerics International ("Polymerics") on November 16, 1995 and the sale of that same block of Polymerics as well as a block of Toys R Us on December 12, 1995. Dr. Brent also alleges that the purchase of Polymerics was unsuitable for his account.

On November 8, 1995, Dr. Brent executed what appears to be Capital's account opening form. That account opening form indicates that, at the time the account was opened, Dr. Brent was a 41 year old dentist with two years investment experience, with investment objectives of "short-term trading" and "speculation", with other brokerage accounts, with an annual income of \$170,000 and with a liquid net worth excluding his residence of \$750,000.

The parties agree that the next day, November 9, 1995, Dr. Brent purchased 200 shares of Toys R Us after a discussion with Plocki. On November 16, 1995, Dr. Brent and Plocki spoke again. Dr. Brent's position is that he agreed to purchase 2,000 shares of Polymerics contingent of four factors: his receipt of a prospectus on Polymerics, Plocki providing information concerning her position at Capital, Plocki providing a current list of clients, and Plocki providing a published magazine article describing her in "a successful brokerage transaction." Capital and Plocki maintain that Dr. Brent made the purchase and at the same time requested information. The parties agree that on November 21, 1995, in response to a Capital confirmation statement, Dr. Brent submitted a check to Capital in the amount \$5,179 representing the cost of the Polymerics purchase. The parties also agree that Dr. Brent stopped payment on that check the next day, November 22, 1995. Dr. Brent indicated that he stopped payment on the check because he had not received the information he had requested from Plocki. While it is unclear when information was received by Dr. Brent, evidently at least one prospectus from the company was received by him although information on Plocki was not forwarded. There is no evidence of any direct contact between the parties between November 21, 1995 and December 7, 1995 when Dr. Brent apparently called Capital to complain about the Polymerics trade. On December 12, 1995, Capital liquidated Dr. Brent's Polymerics position and due to the drop in the value in that security, Capital also liquidated Dr. Brent's position in Toys R Us to cover the short fall.

Based upon this evidence, the Arbitrator finds against Dr. Brent on both his claims of unauthorized trading and suitability. Dr. Brent contends that the initial purchase of Polymerics was

"unauthorized" because it was conditioned on Plocki providing certain information. It is unclear exactly what the condition meant, what effect the failure of the condition would have on the transaction. Nevertheless, the credibility of his position is eroded by the evidence that Dr. Brent did not condition his previous purchase of securities in this account; and that Dr. Brent tendered payment for the Polymerics purchase evidently before receiving any information and without objection that the purchase was a "condition" in any way. It is unclear why, one day later, Dr. Brent stop payment on the check. It is likewise unclear why Dr. Brent did not object to Plocki or Capital in any way until December 7, 1995, well after his receipt of the confirmation slip and evidently still not having received the requested information from Plocki. Finally, Capital well within its rights to liquidate both the Polymeric stock and the Toys R Us stock under paragraph 1 of the agreement executed by the parties at the time the account was opened.

Finally, the evidence concerning Dr. Brent's experience and financial condition indicate that the purchase of Polymerics was suitable for this account.


Theodore D. Griffinger, Jr.
Arbitrator