

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Edward F. & Barbara D. Borden

96-01895

Name of Respondent

PC Financial Network, Donaldson
Lufkin & Jenrette Securities, Inc.

REPRESENTATION

Claimants Edward F. Borden, Jr. and Barbara D. Borden ("Claimants") were represented by Edward F. Borden, Esq., Princeton, NJ.

Respondent PC Financial Network, Donaldson Lufkin & Jenrette Securities, Inc. ("Respondent") was represented by Sarah J. Kreisman, Esq., Pershing, Division of Donaldson Lufkin Jenrette Securities, Inc., Jersey City, NJ.

CASE INFORMATION

The Statement of Claim was filed May 2, 1996.
Claimants' Answer To The Counterclaim was filed February 11, 1997.
Claimants' Uniform Submission Agreement was signed April 29, 1996.

Respondent's Statement of Answer was filed July 18, 1996.
Respondent's Counterclaim was filed December 30, 1996.
Respondent's Uniform Submission Agreement was signed July 18, 1996.

HEARING INFORMATION

Hearing Date/Sessions: April 3, 1997/two sessions

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimants alleged that Respondent failed to follow Claimants' instructions on warrants which caused Claimants to suffer a loss. Claimants alleged that on June 30, 1995 they received 250 warrants to purchase shares of USData Corporation ("USData") because they were shareholders of Safeguard Scientifics, Inc. Claimants alleged that they instructed Respondent, via electronic mail message, to

exercise the warrants and purchase the shares of USData. Claimants alleged that on July 16, 1995, because the warrants had become so valuable, Claimants again sent an electronic mail message to Respondent informing that they had changed their mind and to not exercise the warrants but to sell them at market. Claimants alleged that two days later, Respondent acknowledged the receipt of Claimants' instructions and responded that Claimants' instructions would be followed on a "best efforts basis" and that Claimants were to contact Respondent the next day to confirm. However, Claimants alleged that Respondent did nothing and allowed the warrants to expire on July 21, 1995.

Respondent denied allegations of wrong-doing and alleged as follows: Respondent maintained that Claimants opened an account in May 1993 and both bought and sold securities. Respondent maintained that Claimants received a manual concerning securities transaction on-line, and in a highlighted section entitled Entering Orders On-Line, it specifically states "IMPORTANT Never place orders via PRODIGY Mail." Respondent maintained that on June 26, 1995 as part of a stock split, Claimants received 250 warrants of USData. Respondent maintained that on June 27, 1995 Claimants instructed Respondent to exercise their right to purchase 250 shares of USData and Respondent confirmed those instructions the same day. Respondent further maintained that Claimants were informed that their account would be credited with the shares when they were received from the transfer agent for USData. Respondent maintained that on July 16, 1995 Respondent received instruction from Claimants to cancel the June 27 instruction to exercise the right to purchase the 250 shares of USData. Respondent maintained that on July 19, 1995, Respondent responded to Claimants' latest instructions and informed Claimants that the instructions would be honored on a best efforts basis and that Claimants were to contact Respondent to see if the cancellation could be confirmed. Respondent also informed Claimants that when they contacted Respondent on July 19, 1995 to determine if cancellation was confirmed, they could then enter a sell order if they wished to. Respondent maintained that on July 20, 1995 the order to exercise was successfully canceled but Claimants never called to confirm nor to enter a sell order. Respondent maintained that on July 24, 1995 Claimants called to find out why their warrants were still in the account and Respondent responded on July 26, 1995 reminding Claimants that they were to have confirmed that their request to exercise had been canceled and then, if it had, Claimants could make arrangements to sell. Again Respondent reminded Claimants that buy or sell orders could not be made via electronic mail. In addition, Respondent raised the affirmative defenses of a failure to state a claim upon which relief can be granted; laches and estoppel.

Respondent alleged in the Counterclaim that Claimants continued to use their debit card after requesting transfer of their account, leaving a debit balance which remained unpaid. Respondent maintained that in November 1994 Claimants completed an application for a PC Cash Account and received checks and a Gold MasterCard upon acceptance. Respondent alleged that on July 5, 1996 Claimants instructed Respondent to transfer their account to Charles Schwab & Co., Inc. Respondent maintained that on July 17, 1996 the transfer of the account was completed in accordance with Claimants' instructions. Respondent alleged that Claimants continued to write checks and use their debit card despite the fact that their account had been transferred. Respondent requested the funds from Charles Schwab & Co., Inc. and received a check for \$766.82 in return. However Respondent alleged that when the check was presented for payment it was returned, as Claimants had instructed Charles Schwab & Co., Inc. to stop payment on the check.

Claimants denied the allegations of wrong-doing asserted in the Counterclaim. Claimants maintained that they did not instruct Respondent to transfer their account but were told by Respondent that if they did not close their account, the account would be liquidated at great expense to Claimants. Claimants maintained that this action was taken because Claimants filed the instant arbitration action against Respondent. Claimants maintained that Respondent knew that the account was the family's principal

checking account and that they used the margin loans to pay family bills. Claimants maintained that Respondent's precipitous closing of the account caused "bounced" checks; late charges, defaults and damage to Claimants' credit history. In addition, Claimants alleged that Respondent threatened Claimants with making malicious and defamatory statements to licensing and law enforcement authorities if Claimants refused to settle the matter.

RELIEF REQUESTED

Claimants requested \$5,250.00 in damages; plus pre-award interest; treble damages and punitive damages; in addition to attorney's fees and the costs of this arbitration.

Respondent requested that the Statement of Claim be dismissed and that the costs of this arbitration, including attorneys' fees, be assessed to Claimant.

Respondent requested, in the Counterclaim, damages of \$808.83.

Claimants requested that the Counterclaim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

The arbitrator considered Respondent's Motions to Strike the Statement of Claim and Motion to Dismiss, as well as Claimant's Counter Motion to Strike the Answer, and the non-moving party's Response to each, and denied the Motions.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to and shall pay to Claimants \$5,250.00.
2. That Respondent is liable to and shall pay to Claimants \$10,000.00 in punitive damages based on Respondent's retaliation against Claimants for filing a claim in arbitration, which was required by agreement between Respondent and Claimants.
3. That Respondent is liable to and shall reimburse Claimants \$300.00 for the hearing session deposit previously submitted to the NASD Regulation.
4. That Claimants are liable to and shall pay to Respondent \$808.83.
5. That each party shall pay its own costs and expenses, with the exception of Forum Fees as specified below.
6. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$300.00 = \$600.00

Forum Fees are assessed to Respondent. Respondent is to receive credit for the \$300.00 hearing session deposit previously submitted to the NASD Regulation, as well as the \$300.00 hearing session deposit which was reimbursed to Claimants. Therefore, there are no additional Forum Fees due from Respondent.

DATE

ARBITRATOR'S SIGNATURE

May 1, 1997

Michael D. Gottsch

Michael D. Gottsch
Public Arbitrator

Date Decision Served by NASD Regulation: May 2, 1997