

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Peter C. Restivo

96-02051

Name of Respondents

Nationwide Securities Corp.
Kevin Williams

REPRESENTATION

For Claimant Peter C. Restivo ("Claimant") appeared Ruthann G. Niosi, Esq., New York, New York.

Respondents Nationwide Securities Corp. ("Nationwide") and Kevin Williams were represented by Jonathan A. Pace, of the firm Pace and Rickey, Dallas, Texas. Prior to the hearing, Mr. Pace withdrew as counsel for respondents. Kevin Williams thereafter appeared pro se and did not attend the hearing. Nationwide did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: May 13, 1996.

Claimant's Submission Agreement signed on: May 13, 1996.

Amended Statement of Claim filed: May 30, 1996.

Statement of Answer filed by Respondent Nationwide on: July 18, 1996.

Respondent Nationwide's Submission Agreement signed on: August 20, 1996.

Statement of Answer filed by Respondent Williams on: August 22, 1996.

Respondent William's Submission Agreement signed on: August 20, 1996.

HEARING INFORMATION

Hearing Date/Sessions: April 21, 1997/One Session

Hearing Location: The hearing was held at the offices of NASD Regulation, Inc. in New York, New York.

CASE SUMMARY

Claimant alleged that he was employed as a registered representative for Nationwide between October 31, 1995 and March 28, 1996. Claimant alleged that he worked in the New York branch office.

Claimant alleged that for the periods January 21 through February 20 and February 21 through March 26, he earned \$62,261.10 and \$82,338 respectively in gross commissions. Claimant alleged that he did not receive payment of these amounts from respondents. Claimant also alleged that the trade executions at Nationwide were improper and that his trades were not executed on a number of occasions. Claimant also alleged that his inability to execute trades caused problems for him with his clients.

Claimant alleged that Williams told him that he had to have money in his account before a trade could be executed. Claimant asserted that, because he questioned this policy, his Form U-5 was marked "fired with cause." Claimant also alleged that he now has a number of customer complaints against him as a result of his employment with Nationwide and that a number of unauthorized trades were made under his registration number. Claimant alleged that when one of his clients had money in their account, Nationwide would purchase a security for which Nationwide was a market maker for that account. Claimant maintained that he attempted to cancel these unauthorized trades, and that, although he was advised that the cancellations would be made, they never were. Claimant alleged that, on March 20, 1996, he was promised a check for the commissions he earned. Claimant maintained that, when he did not receive the promised payment, he resigned on March 28, 1996. Claimant also alleged that Respondent Williams made disparaging comments about claimant to claimant's clients and blamed claimant for all the trading errors in his clients' accounts.

Respondents alleged that Nationwide received numerous complaints about claimant's execution of unauthorized trades and maintained that he was terminated for this reason. Respondents also maintained that claimant is not entitled to any commissions due to his conduct and further maintained that all commissions on authorized trades are offset by the losses incurred by this unauthorized activity.

Respondent Williams also maintained that claimant did not want to adhere to the conditions which were imposed by Nationwide on his branch office in New York which had been put on a cash only basis. Williams asserted that the New York branch office was a problem office which mistreated its customers and caused compliance problems for Nationwide. Williams maintained that claimant knew that Nationwide terminated its relationship with the New York office for these reasons.

RELIEF REQUESTED

Claimant requested \$86,759.46 in commissions owed and \$400,000 in punitive damages.

Respondents requested dismissal of the Statement of Claim in its entirety, all costs, fees, expenses and attorneys fees and such other relief as required by justice and equity.

OTHER ISSUES CONSIDERED & DECIDED

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.

AWARD

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

1. Respondent Nationwide Securities be and hereby is liable and shall pay to claimant the sum of \$37,357.00 in compensatory damages;
2. Respondent Nationwide Securities be and hereby is liable and shall pay to claimant the sum of \$9,089.00 in liquidated damages pursuant to New York State Labor Law, Section 198. The panel unanimously found that Respondent Nationwide's failure to pay claimant his commissions was willful;
3. Respondent Nationwide Securities be and hereby is liable and shall pay claimant for attorney's fees in the amount of \$2,500.00 pursuant to New York State Labor Law, Section 198.
4. All claims against Respondent Kevin Williams are dismissed.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500 non-refundable filing fee and have assessed the following Forum Fees:

One session	x	\$750.00
Minus claimant's hearing		
session deposit	-	<u>\$750.00</u>
TOTAL OUTSTANDING		0

Respondent Nationwide Securities be and hereby is liable for \$750.00 representing 100% of the Forum Fees assessed. Claimant has paid \$750.00 to NASD Regulation, Inc. Respondent shall reimburse claimant \$750.00.

Concurring Arbitrators' Signatures

A handwritten signature in dark ink, appearing to read 'L. Pittore', written over a horizontal line.

Lawrence A. Pittore, Esq.

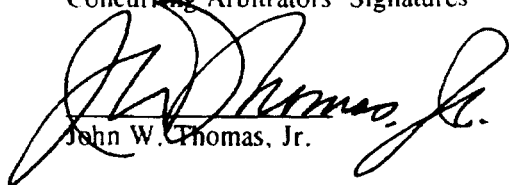
I, Lawrence A. Pittore, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

A handwritten signature in dark ink, appearing to read 'L. Pittore', written over a horizontal line.

Lawrence A. Pittore, Esq.

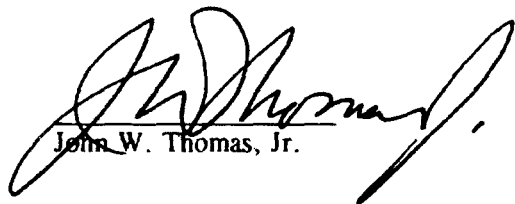
Date of Decision: May 16, 1997

Concurring Arbitrators' Signatures



John W. Thomas, Jr.

I, John W. Thomas, 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.



John W. Thomas, Jr.

Date of Decision: May 16, 1997

Concurring Arbitrators' Signatures

A handwritten signature in black ink, appearing to be 'Karen M. Hertz', written over a horizontal line.

Karen M. Hertz, Esq.

I, Karen M. Hertz, 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.

A handwritten signature in black ink, appearing to be 'Karen M. Hertz', written over a horizontal line.

Karen M. Hertz, Esq.

Date of Decision: May 16, 1997