

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Dubl I Investments

96-02058

Name of Respondent

Pacific Brokerage Services, Inc.  
Jason Wallace  
James (Mike) Kruger

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 13, 1996, Claimant Dubl I Investments ("Claimant") through its representative, Ivan Tobias, Partner, alleged that Respondent Pacific Brokerage Services, Inc. ("Respondent") improperly charged DUBL I's account for the loss on a short sale. Claimant further alleged that on January 16, 1996 it place a day order to sell 225 shares of Fremont General Corporation ("FGC") and reentered the order on January 17, as no confirmation of the sale had been provided. Claimant also alleged that Respondent sold 225 shares of FGC on both the 16th and the 17th despite the fact it is not permitted to sell unowned shares when there is insufficient cash in its account to cover the transaction. Claimant contended that it was not informed of the sale on the 16th until the market was closed on the 17th. Claimant further contended that Respondent bought shares in its account to cover the 225 shares that were improperly sold on the 17th and has charged it with the loss. Claimant also contended that as a result of the above, it has suffered a loss for which the Respondent should be held liable.

Respondent Pacific Brokerage Services, Inc. through its representative, Jason Wallace, Senior Vice President, maintained that Tobias has been a subscriber to PBS' Online Computer Service since July 17, 1995, and that nearly all of his trades have been made via computer. Respondent further maintained that all executions are automatically reported to its clients via e-mail, and each time a client logs on the system, the customer is notified of waiting e-mail. Respondent also maintained that Claimant had used this system for 40 trades prior to the one in dispute. Respondent contended that on January 16, 1996, Claimant placed a day order to sell 225 shares of FGC via the online system. Respondent further contended that on January 17, at 9:47 am (eastern), it received the sale confirmation and immediately forwarded it to Claimant's e-mail.

Respondent also contended that at 12:25 pm (eastern), Claimant again sold 225 shares of FGC, ignoring the recent e-mail concerning recent account activity. Respondent asserted that on January 18, 1996, Claimant was notified of the short position it had created by the sale on the 17, and that on the 23rd it executed a buy-in as it had not heard either verbally or electronically from Claimant. Respondent further asserted that Claimant's position that it has a cash account is correct, but that customers with cash accounts often sell short through it and then transfer in shares from outside sources to cover the trades. Respondent also asserted that as a result of the above, it should not be held liable.

Claimant Dubl I Investments withdrew all claims against Respondents James (Mike) Kruger and Jason Wallace prior to service of the Statement of Claim.

### **RELIEF REQUESTED**

Claimant Dubl I Investments requested \$511.13 in actual damages.

Respondent Pacific Brokerage Services, Inc. requested that the claims be dismissed in their entirety.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Diana G. Davis, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 8, 1996 and by Respondent on July 22, 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 Dubl I Investments against Respondent Pacific Brokerage Services, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **DIANA G. DAVIS, ESQ.**, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:**

**September 6, 1996**