

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Carol Kunik

96-02064

Name of Respondent

Bradford P. Billings

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 13, 1996, Claimant Carol Kunik ("Claimant"), who appeared Pro Se, alleged that Respondent Bradford P. Billings ("Billings") failed to execute a sell order. Claimant further alleged that in July of 1994, she purchased 1,000 shares of Servico stock from Billings, an agent of Cresap Incorporated, at a price of \$9.00 per share. Claimant contended that she called Billings in July of 1995 and requested to sell the stock, and that Billings convinced her to wait, as he was sure the stock would soon appreciate. Claimant further contended that in October of 1995, she informed Billings that she wanted to sell the stock, but that Billings convinced her to buy an additional 1,000 shares on margin as Billings had said that the company was in negotiations for a takeover and it was anticipated that the stock would go from 15 to 20 in three weeks. Claimant asserted that the take over never occurred and the stock began to plunge in value. Claimant further asserted that in early 1996, she placed an order that the stock be automatically sold when it reached \$15 a share. Claimant alleged that in February of 1996, the stock reached 13 7/8, and that when she inquired about selling the stock, Billings encouraged her not to sell. Claimant further alleged that the stock plunged again and that on April 8, 1996 she spoke to broker Mark Cresap who executed her order to sell the stock. Claimant contended that she would have made \$6,000.00 if the stock had been sold as requested in October of 1995. Claimant further contended that due to the wrongdoing of the Respondent, she has suffered damages for which the Respondent should be held liable.

Respondent Bradford P. Billings, who appeared Pro Se, maintained that the risks and potential rewards of stock ownership were clearly discussed with Claimant. Respondent further maintained that during the discussions he had with Claimant, he stated that he believed the stock should be held for further appreciation, and that he absolutely did not disregard an order to sell. Respondent alleged that in October of 1995, based on strong fundamentals and the potential for a takeover, he advised Claimant to purchase

a second 1,000 shares of Servico. Respondent further alleged that Claimant agreed to this recommendation and that no guarantee, or anything approaching a guarantee was ever made to Claimant. Respondent maintained that in November of 1995, he advised Claimant to sell her first 1,000 shares of Servico at 13 1/4, which Claimant authorized. Respondent further maintained that he advised Claimant to hold her second 1,000 shares of Servico and that no instructions to sell the second 1,000 shares was given. Respondent alleged that on February 13, 1996, Claimant entered a GTC order to sell 1,000 shares of Servico at 15 and that no order to sell immediately was given. Respondent further alleged that if Claimant had instructed him to sell immediately, he would have done so. Respondent maintained that on April 1, 1996, Claimant canceled her GTC order to sell Servico at 15 and instructed Mark Cresap to sell her 1,000 shares at the market. Respondent further maintained that this order was executed at 11 3/4 and that the two combined Servico transactions resulted in a net profit of \$312.61. Respondent alleged that all investment decisions were made in the context of Claimant's \$75,000.00 per year income and net worth, excluding her residence of \$200,000.00. Respondent further alleged that he was never asked to sell Claimant's stock, that he had committed no wrongdoing, and requested that the claims against him be dismissed.

In a Reply to the Response of the Respondent, Claimant alleged that she accepted Billings' recommendation to purchase on margin due to his adamant prediction that the stock would go to \$20 per share as soon as the company was taken over. Claimant further alleged that in November 1995, Respondent sold 1,000 shares of Servico without her permission. Claimant contended that she does not earn \$75,000.00 per year, and that without the equity in her home the only asset that she has is an IRA account that was worth about \$30,000.00 at the time the margin account was opened.

#### **RELIEF REQUESTED**

Claimant Carol Kunik, requested \$6,000.00 in actual damages.

Respondent Bradford P. Billings requested that the claims of the Claimant be dismissed.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William Lerner, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Carol Kunik on May 8, 1996, and by the Respondent Bradford P. Billings on June 11, 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. Respondent Bradford P. Billings liable and shall pay to Claimant Carol Kunik \$3,250.00 in actual damages.

2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Carol Kunik shall be retained by the NASD, Inc. Respondent Bradford P. Billings is liable and shall pay to Claimant Carol Kunik \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **WILLIAM LERNER, 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.

A handwritten signature in dark ink, appearing to read "William Lerner", is written over a horizontal line.

**DATE OF DECISION:**      **August 30, 1996**

Item 8  
CLARIFICATION OF DECISION  
In the Matter of Kunik v. Billings and Cresap, Inc.  
NASD Case Number 96-02064

The following comments may help clarify the decision rendered in the subject matter.

It appears that in July 1994 Ms. Carol Kunik purchased 1,000 shares of Servico, Inc. at a price of \$9/share as an "investment" upon the recommendation of her broker Mr. Bradford P. Billings of Cresap, Inc., and that Mr. Billings made his recommendation and Ms. Kunik made her purchase based upon the fundamentals of the stock. The purchase was made in a margin account and not in a cash account, and Ms. Kunik sold mutual funds to secure the money to purchase the shares.

It appears that Mr. Billings sold the 1,000 shares for Ms. Kunik 16 months later as a "defensive" measure in November 1995 at a price of \$13 1/4 for a profit of \$3,837.40.

In my view there is no liability created by virtue of these transactions. Despite the fact that the price of Servico apparently had been higher than the \$13 1/4 sale price, Ms. Kunik was free to sell her shares at any time had she wanted to, despite the apparent resistance to sell exhibited by Mr. Billings. Had she sold when the stock had reached a higher price she would have realized a larger profit on the transaction than the \$3,837.40 which she realized. Investors cannot be compensated for "lost opportunity".

It also appears that in October 1995, Mr. Billings recommended the purchase of an additional 1,000 shares of Servico. It is apparent that Mr. Billings made this recommendation not based solely upon the fundamentals of Servico, but upon the fact that the company was "attractive as a takeover target" (as stated in the Bankers Trust Report) and despite the "stocks recent surge". While not stated in either presentations, it appears that the purchase price was about \$15 per share. Ms. Kunik states that she was "convinced" by Mr. Billings that as a "takeover" stock, she could realize a "fast profit" on the second purchase. It was reasonable for Ms. Kunik to believe Mr. Billings because at the time of the second purchase in October 1995 she has a substantial paper profit on her first purchase. It appears further that what was first presented to Ms. Kunik as an opportunity to make a profit from an "investment" situation based on fundamentals, became an opportunity to make a profit from a "trade" since the company whose shares were being purchased might have "been in play".

In the view of the Arbitrator, Mr. Billings had an obligation as the broker in whom Ms. Kunik had placed trust and confidence to continue to minimize risk to this investor and not to increase risk. By recommending that Ms. Kunik purchase a stock that was a possible takeover candidate and had a substantial "surge" in price, Mr. Billings increased the investor's risk by placing her in a stock that was primarily suitable for traders and not inexperienced investors. Accordingly, Mr. Billings incurred liability to the investor for the risk of the investment. The purchase of the second 1,000 shares was not suitable for the investor who admittedly had very little experience in the purchase or trading of stocks.

Since the 1,000 shares of Servico were purchased at a price (assumed) of about \$15 per share and were sold at a price of \$11 3/4, the apparent loss is \$3,250, and Mr. Billings and Cresap, Inc. are responsible to Ms. Kunik for the loss.

WILLIAM LERNER  
ARBITRATOR