

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Elmer G. Nordstrom

and

96-02086

Name of Respondent

National Discount Brokers

REPRESENTATION OF PARTIES

Elmer G. Nordstrom ("**Claimant**") was represented by Stephen G. Froehle, Esq., Persian, MacGregor & Thompson, Minneapolis, Minnesota.

National Discount Brokers ("**Respondent**") was represented by David E. Robbins, Esq., Kaufman, Feiner, Yamin, Gildin & Robbins, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 14, 1996. Submission Agreement of Claimant Elmer G. Nordstrom was signed on March 2, 1996.

Statement of Answer was filed by Respondent National Discount Brokers on or about August 5, 1996. Submission Agreement of Respondent National Discount Brokers was signed on July 25, 1996 by Adam Rezak.

HEARING INFORMATION

The hearing was held on Monday, January 27, 1997 in Minneapolis, Minnesota for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent engaged in fraudulent, dishonest, deceptive or at a minimum, negligent conduct in connection with the failure of Respondent to follow the directions of the Claimant. Specifically, Claimant alleged that Respondent failed to carry out the Claimant's order to sell 44,500 shares of Protein Polymer Technologies ("PPTI") stock at 1/4 for the day. Claimant alleged that instead, Respondent placed an order to sell the shares of PPTI at a limit price of 1/4 and

the order was listed as good till cancelled with no restrictions. It was further alleged by the Claimant that as a result of the erroneous order entered by Respondent his 44,500 shares of PPTI were sold netting \$10,890.63 instead of the Claimant retaining the 44,500 shares of PPTI worth approximately \$102,350 at the time of filing the statement of claim.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant entered three separate and distinct good til cancel orders to sell his shares of PPTI on three different dates and that the Claimant also entered a market order to sell the remaining shares, which was done. It was also stated that when the Claimant attempted to cancel one of the good til cancel orders, the market maker for the trade failed to do so. The failure to cancel the good til cancel order resulted in a technical short position in the Claimant's account when, thereafter, shares were sold when there were no shares in the account. Respondent further stated that it had no incentive to engage in the alleged unauthorized trading in the account since it is a discount brokerage firm that charges a client \$25 per trade.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$100,000 representing the value of lost shares of PPTI, lost interest and appreciation, return of converted monies reimbursement of approximately \$450 of cancelled check charges, the exact amount of which is to be determined by the arbitration panel. Claimant also requested the following:

- ▶ for a tripling of the compensatory award or such other larger amount as the arbitration panel deems just, to send a message to Respondent, under general Minnesota punitive damages statute, the Minnesota double and treble damage theft statutes;
- ▶ reasonable attorneys' fees as required under Minnesota Securities Laws, Minnesota Consumer Fraud Statute, and the Minnesota Treble Damage Theft Statute;
- ▶ pre-judgment interest on all damages awarded from October 15, 1995 through the date of the award;
- ▶ costs, disbursements and expenses incurred in pursuing this matter; and
- ▶ for such other and further relief as the arbitration panel deems just and equitable.

Respondent requested that the claims asserted against it be dismissed and that it be awarded its costs and attorneys' fees.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

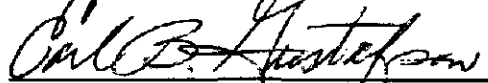
1. Respondent National Discount Brokers shall be and hereby is liable for and shall pay to the Claimant Elmer G. Nordstrom the sum of \$450 (**four hundred fifty dollars**).
2. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

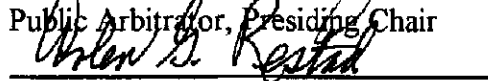
Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions \times \$750 = \$1,500 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Elmer G. Nordstrom. Respondent National Discount Brokers shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500 as forum fees.

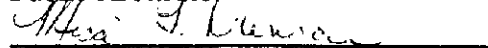
Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 paid by Respondent National Discount Brokers. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**



Earl B. Gustafson
Public Arbitrator, Presiding Chair



Arlen G. Restad
Public Arbitrator



Mica T. vDuncan
Industry Arbitrator

Dated:

1-27-97

1-27-97

1-27-97