

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Patrick Tidalgo and Jessica Dillon

96-02099

Name of Respondent

Waterhouse Securities Inc,

REPRESENTATION

For claimants Patrick Tidalgo ("Tidalgo") and Jessica Dillon ("Dillon"), (collectively "claimants") appeared Morgan W. Bentley, Esq., located in Newark, New Jersey.

For respondent, Waterhouse Securities Inc., ("Waterhouse"), appeared Bob Bohrer Esq., in-house counsel for Waterhouse.

CASE INFORMATION

Statement of Claim filed: May 14, 1996.

Claimant Tidalgo's Submission Agreement signed on: May 10, 1996.

Claimant Dillon's Submission Agreement signed on: June 12, 1996.

Statement of Answer filed by respondent on: August 13, 1996.

Respondent's Submission Agreement signed on: August 13, 1996.

HEARING INFORMATION

Hearing dates/sessions: March 17, 1997 - Two Sessions

The hearings were held at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimants alleged that, on May 1, 1996, at 10:20 a.m., Tidalgo placed an order with Waterhouse to purchase 30,000 shares of Pacific Snax ("PSNX") at the market. Claimants further alleged that a

Waterhouse registered representative informed Tidalgo that a confirmation report would be available in 5 to 10 minutes and an execution was expected at \$.13 per share. Claimants also alleged that Tidalgo called Waterhouse back at about 10:25 a.m. and the Waterhouse representative said there was no report on the 30,000 share order but that a confirmation of execution should occur in 5 to 10 minutes of entry of the order and he quoted a price of \$.13 to \$.16 per share for PSNX. Claimants asserted that, based on this price, they placed a second market order for an additional 16,000 shares. Claimants further asserted that, based on the market price, the orders should have been executed for approximately \$6500 plus commissions which would have been covered by the cash balance in their account. Claimants also asserted that, from 10:20 a.m. until after 11:00 a.m., Tidalgo tried to get confirmation from Waterhouse regarding execution of his orders. Claimants contended that, because of respondent's unreasonable and untimely executions, their orders were executed between \$.43 and \$.9375 per share at a total cost to their account in excess of \$38,000.

Respondent maintained that, on May 1, 1996, at 10:20 a.m., Tidalgo called respondent's account officer, Mark Putrino, and was told that, at the time, the price of PSNX was \$.06 to \$.13 per share. Respondent contended that at 10:21 a.m. Tidalgo placed an order for 30,000 shares at the market and was told that he could probably expect an execution within five to ten minutes. Respondent further contended that several minutes later Tidalgo called again and inquired about his previous order for which there was still no report and then at 10:31 a.m. placed an order for an additional 16,000 shares at the market after being informed that the current market price was \$.13 to \$.16 per share. Respondent also contended that the orders were executed between 10:56 a.m. and 10:57 a.m. and this information was promptly relayed to Tidalgo who claimed that the prices were too high. Respondent alleged that, on May 3, 1996, its branch manager spoke with Tidalgo who informed him he had no intention of paying for the stock purchases and that he believed the transactions should be canceled. Respondent further alleged that the branch manager advised Tidalgo that it had no control over the prices at which orders were executed and that Tidalgo was liable for full payment of the purchase price. Respondent also alleged that claimants refused to remit payment so their PSNX stock was liquidated as were the remaining positions in claimants' account leaving a deficit of \$7,372.81.

Respondent maintained that claimants were experienced in trading over-the-counter securities and had no reasonable basis for assuming that they would receive a specific execution price and at no time did the respondent imply that they were entitled to a specific execution price. Respondent further maintained that, once an order has been accepted and transmitted to a market maker, any delay in execution is beyond its control and any such delay was probably due to the extremely active trading in PSNX on that day.

In its Counterclaim, respondent alleged that claimants are jointly and severally liable to it in the amount of \$7,372.81, representing the debit balance remaining after liquidation of all positions.

RELIEF REQUESTED

Claimants requested: \$28,000 in actual damages, attorneys' fees, punitive damages and expungement and negation of the debit balance in their account.

Respondent requested: The Statement of Claim be dismissed in its entirety and that the claimants be made to bear all expenses, \$7,372.81 plus interest thereon from May 4, 1996 through the date of the award, and all costs including attorneys' fees.

OTHER ISSUES CONSIDERED AND 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.

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. Claimants' claims be and hereby are dismissed in their entirety.
2. Claimants be and hereby are jointly and severally liable and shall pay to the respondent \$7,372.81.
3. All requests for attorney fees are denied.
4. All requests for punitive damages are denied.
5. All other requests for relief are denied.

FORUM FEES


Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by the claimants and have assessed the following forum fees:

2 Hearing Sessions x \$400	= \$800.00
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Claimants be and hereby are jointly and severally liable and shall pay to NASD Regulation Inc. \$400.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$400.00 with NASD Regulation, Inc. Therefore, Claimants owe nothing.

Respondent be and hereby is liable for \$400.00 representing one-half of forum fees assessed in addition to a \$500.00 filing fee for its counterclaim.

Fees are payable to NASD Regulation, Inc.



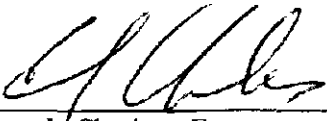
Erwin J. Shustak, Esq.

I, Erwin Jay Sustak, Esq., 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.

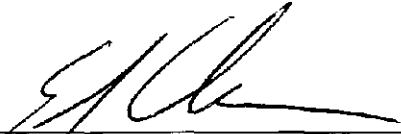


Erwin Jay Sustak, Esq.

DATE OF DECISION: MAY6,1997



Evan J. Charkes, Esq.

I, Evan J. Charkes, Esq., 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.

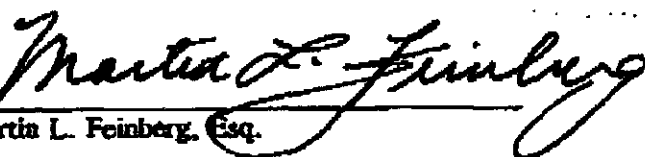

Evan J. Charkes, Esq.

date of decision; May 6, 1997

ARBITRATORS' SIGNATURES


Martin L. Feinberg, Esq.

I, Martin L. Feinberg, Esq., 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.


Martin L. Feinberg, Esq.

DATE OF DECISION: MAY 6, 1997