

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Anthony Iannolo

96-02138

Name of Respondents

Pacific Brokerage Services, Inc.
James R. Kruger

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on May 17, 1996, claimant Anthony Iannolo ("claimant"), who appeared Pro Se, alleged that on May 17, 1995 he contacted respondent Pacific Brokerage Services, Inc. ("PBS") and was informed by its agent that he held 8,400 shares of Standard Brand Paint ("SBP") at \$2 1/4 per share. Claimant further alleged that based on this information, he placed an order to sell all of his SBP shares. Claimant also alleged that on May 18, 1995 he received confirmation that the shares were sold as follows: 1,200 at \$2.00 per share, 2,900 at \$1 7/8 per share and 4,300 at \$1 3/4 per share. Claimant asserted that on the same date, he learned through the financial news report of a 10-to-1 reverse stock split on SBP stock. Claimant further asserted that he contacted PBS and was told that it had been notified of the split three hours after opening on May 17, 1995. Claimant also asserted that respondent failed to take prompt action and repurchased only 7,560 of the SBP shares as follows: 1,100 at \$2 7/8 per share, 4,960 at \$2 3/4 per share and 500 at \$2 5/8 per share. Claimant contended that respondent failed to provide the necessary information which would have allowed him to take action. Claimant further contended that he should not be liable for costs associated with the SBP transactions.

Respondents Pacific Brokerage Services, Inc and James R. Kruger ("respondents"), through their Compliance Officer, James R. Kruger, maintained that it conducts business on an unsolicited agency basis. Respondents further maintained that they sold and confirmed the sale of 8400 SBP according to claimant's request of May 17, 1995 at approximately 10:21 a.m. Respondents also maintained that at approximately 14:03 EST, its back office received a facsimile from NYSE which provided notification of the effective date of the reverse split. Respondents asserted that its Compliance Department was notified early on May 18, 1995 that due to the late notification from the NYSE, claimant had oversold his position on SBP. Respondents further asserted that claimant's "oversale" was immediately covered and on May 19, 1995 claimant was notified of the over-sale. Respondents also asserted that claimant indicated that he ~~was~~ was aware of the reverse stock split. Respondents maintained that it acted in a timely manner to correct claimant's error and should not be held responsible."

RELIEF REQUESTED

Claimant Anthony Iannolo requested \$5,880.03 in actual damages, attorney fees of \$690.00 and filing fees of \$150.00.

Respondents Pacific Brokerage Services, Inc. and James R. Kruger requested that the claim be dismissed.

REPORT OF ARBITRATOR

- 1) The filing made over one year after the alleged improper activity occurred (May 18, 1995). Claimant appears to be unsure of his position.
- 2) Claimant's monthly PBS statement (5/31/95) shows a journal entry from May 19, 1995 changing 8,400 old shares of SBP stock to 840 new shares. The act of selling the old stock is recorded (5/24/95), and the purchase of the new stock is on the same date, not on 5/18/95 as the claimant states.
- 3) The \$5,880.03 declared as a loss is shown in the PBS statement of May 31, 1995 as "Margin to Cash" account.
- 4) PBS statements show 3 sales of 8,400 shares sold at the new price for a total of \$15,149.57 and 4 purchases of 7,060 shares at the new price totalling \$21,131.00 - quite close to the loss of \$5,880.03 the claimant requests. Commissions are not on the monthly statement, nor are the margin positions detailed.
- 5) Claimant requests reimbursement for PBS fees in handling buy and sell orders of SBP stock because Merrill Lynch and other brokerage firms have done so. Claimant should review his customer account agreement of October 23, 1991 which indicates that as a discount brokerage, PBS is only responsible to execute trading orders and activity as instructed by the account holder. The role of PBS is not to issue suggestion, recommendations, or advice in any fashion regarding individual accounts.

Therefore, based on the information submitted, the arbitrator determined there was no negligence or liability on the part of respondents.

AWARD

Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator Charles D. Behm, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Anthony Iannolo on June 25, 1996, and by respondents Pacific Brokerage Services, Inc. and James R. Kruger on August 19, 1996.

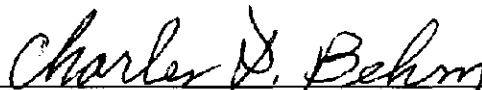
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claim of claimant Anthony Iannolo against respondents Pacific Brokerage Services, Inc. and James R. Kruger is dismissed in its entirety.
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 Anthony Iannolo shall be retained by NASD Regulation, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **CHARLES D. BEHM**, 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.



Signature of Arbitrator

DATE OF DECISION: March 19, 1997