

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Sherwin J. and Shirley Fischer

96-02247

Name of Respondents

Nationwide Securities Corp.
Chris Ray

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 28, 1996, claimants Sherwin J. and Shirley Fischer ("claimants"), who appeared Pro Se through Sherwin Fischer ("claimant"), alleged that respondents Nationwide Securities, Corp. ("NSC"), through its representative, respondent Chris Ray ("Ray"), improperly handled their account. Claimant further alleged that on March 4, 1996, he instructed Ray to sell 750 shares of Thermo-Mizer warrants and 750 Thermo-Mizer warrants and that this instruction was not followed. Claimant also alleged that no confirmation was received so he attempted to trace down the problem and was unable to get respondents to sell the securities. Claimant contended that on March 15, 1996, 240 Gaylord Companies, Inc. warrants were purchased for the account without authorization. Claimant further contended that Ray informed him to pay for the trade in order to protect his account but that the trade would be corrected and he would be reimbursed immediately. Claimant also contended that the trade was never corrected and he was not reimbursed. Claimant asserted that he complained to NSC but that nothing was done to correct the problems. Claimants further asserted that as a result of the above, they have suffered a loss for which the respondents should be held liable.

Respondent Nationwide Securities, Inc. through its representative and counsel, Jonathan A. Pace, Esq., of the law firm of Pace & Rickey, LLP, located in Dallas, Texas, maintained that claimants purchased 750 Thermo-Mizer warrants and 750 Thermo-Mizer common shares. Respondent further maintained that the claimants have chosen to retain the securities and therefore have incurred no loss to date. Respondent also maintained that claimants cannot both keep the shares and collect damages. Respondent contended that as a result of the above, it should not be held liable.

Respondent Chris Ray did not file a Statement of Answer to the Statement of Claim.

Claimants filed an additional documentary submission dated September 16, 1996.

RELIEF REQUESTED

Claimants Sherwin J. and Shirley Fischer requested \$6,994.75 in actual damages.

Respondent Nationwide Securities, Corp. requested that the claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to Section 10302 of the NASD Code of Arbitration Procedure, respondent Chris Ray was sent the Statement of Claim via regular mail and was given an opportunity to respond which he failed to do. In addition, an overdue answer notice and notice of the identity of the arbitrator were sent via regular mail.

Pursuant to the by-laws of the NASD, the arbitrator determined that respondent Chris Ray had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert J. Downing, Esq., was selected to review the matter in controversy between the parties set forth in submissions to arbitration signed by the claimants on May 20, 1996, and by respondent Nationwide Securities, Corp. on August 20, 1996 and not by respondent Chris Ray as is required by Sections 10301 and 10302 of the NASD Code of Arbitration Procedure.

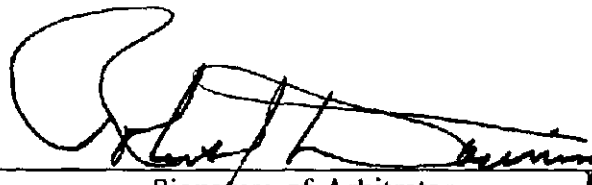
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Nationwide Securities, Corp. and Chris Ray are jointly and severally liable and shall pay to the claimants Sherwin and Shirley Fischer \$244.75 in actual damages. Prior to payment, claimants Sherwin and Shirley Fisher shall surrender to respondents Nationwide Securities, Corp. and Chris Ray the 240 Gaylord Companies, Inc. warrants which are the subject of this claim.

2. Respondent Nationwide Securities, Corp. is liable and shall pay to the claimants Sherwin and Shirley Fischer \$6,994.75 in actual damages. Prior to payment, claimants Sherwin and Shirley Fisher shall surrender to respondent Nationwide Securities, Corp. the 750 Thermo-Mizer warrants and 750 Thermo-Mizer common shares which are the subject of the claim.
3. The parties shall bear their respective costs and attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimants shall be retained by the NASD, Inc. Respondent Nationwide Securities Corp. is liable and shall pay to the claimants Sherwin and Shirley Fischer \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, Robert J. Downing, 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.



Signature of Arbitrator

DATE OF DECISION: December 19, 1996