

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Curtis Eugene and Ann Elaine Spencer

96-02327

Name of Respondent

Black & Company

CASE SUMMARY

In a case filed with the National Association of Securities Dealers, Inc. on May 31, 1996, claimants Curtis Eugene and Ann Elaine Spencer ("claimants"), who appeared Pro Se, alleged that respondent Black & Company ("respondent") made an unauthorized transaction in their account. Claimants further alleged that on May 13, 1996, they placed an order to buy 300 shares of DEL Global Technologies ("DEL") at a price of \$9 or \$10. Claimants also alleged that when they placed the order with Anne-Marie Stapelman (an employee of the respondent), she told them that there was no current bid or ask price for the stock and that it closed at \$9 9/16 on Friday. Claimants asserted that after she informed them that the stock closed at \$9 9/16 they told her that it would be fine to purchase. Claimants further asserted that they placed a second call to respondent and were informed that DEL was purchased at \$20.00 per share. Claimants also asserted that Ms. Stapelman told them that DEL was bought at the opening price, since they did not state that they were placing a limited order. Claimants contended that when they spoke with respondent's compliance person Teri Duffy, they were informed that nothing could be done, since the stock was purchased as an unlimited order. Claimant further contended they thought it was clear that they were buying this stock at \$9 or \$10.

Respondent Black & Company ("respondent"), through its representative and Executive Vice President Teri Duffy, maintained that on May 13, 1996, at 6:40 a.m. claimants inquired about DEL. Respondent further maintained that Anne-Marie Stapelman informed them that there was currently no bid offer available on the stock, and that the last trade on Friday was a \$9 9/16. Respondent also maintained that claimants asked Ms. Stapelman to buy 300 shares of DEL, when the stock opened. Respondent contended that Ms. Stapelman repeated back to Curtis Eugene Spencer that she was buying 300 shares of DEL, when the market started trading the stock. Respondent further contended that after claimants were informed that DEL had been purchased at \$20, they spoke with Teri Duffy who explained to them that because they placed an order to buy the shares at the opening price without placing a limit on the price, they were obligated to buy the stock at the opening price. Respondent also contended that it is necessary to make it clear to a broker that the investor is unwilling to pay more than a specific price. Respondent maintained had the claimants indicated that they were unwilling to pay more than a specific price, Ms. Stapelman would have known to place a limit order rather than a market order.

RELIEF REQUESTED

Claimants Curtis Eugene and Ann Elaine Spencer requested that Black & Company refund their original investment of \$6,053.00 in return for the 300 shares of DEL Global Technologies or they will retain the 300 shares of DEL Global Technologies and Black & Company will refund them \$3,000.00 which is the difference between what they asked to buy the stock for and what they bought the stock for.

Respondent Black & Company requested that the claim of the claimant should be dismissed in its entirety

AWARD

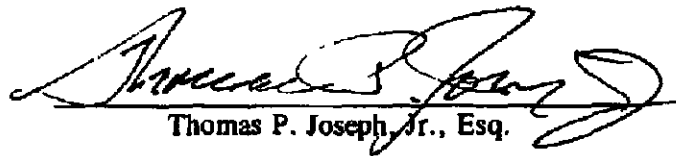
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas P. Joseph Jr., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by Claimants Curtis Eugene and Ann Elaine Spencer, on May 24, 1996 and by respondent Black & Company on June 27, 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 Black & Company is liable and shall pay to the claimants Curtis Eugene and Ann Elaine Spencer \$6,053.00, in actual damages.
2. Claimants Curtis Eugene and Ann Elaine Spencer are to return to respondent Black & Company the 300 shares of DEL Global Technologies, together with any and all dividends received.
3. The parties shall bear their respective costs
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimants Curtis Eugene and Ann Elaine Spencer shall be retained by the NASD, Inc. Respondents Black & Company are liable and shall pay to the claimants Curtis Eugene and Ann Elaine Spencer \$62.50 as reimbursement of one-half the filing fee.

AFFIRMATION

I, **THOMAS P. JOSEPH Jr.**, 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.



Thomas P. Joseph Jr., Esq.

Date of Decision: August 27, 1996