

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bryan Kittelberger
Michael Deming

96-02433

Name of Respondent

Investors Associates, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on June 7, 1996, claimant Bryan Kittleberger (Claimant), who appeared Pro Se, alleged that on August 23, 1995 he placed an order with respondent Investors Associates, Inc., ("respondent") to sell at market 15,000 shares of his Instant Publisher (TIPIF) stock. Claimant further alleged that TIPIF's bid was \$7 23/32 and ask was \$7 24/32. Claimant also alleged that he called respondent approximately 15 times and attempted to get confirmation of the sale, to no avail. Claimant contended that on the same day, he was able in quick time, to sell and get confirmation for the sale of 23,000 TIPIF with two different firms. Claimant further contended that Jeff Hoyt, a supervisor at respondent's office, informed him that respondent had recently become market maker of TIPIF and did not want to "...dump that stock in the market and get a bad name for themselves." Claimant asserted that respondent eventually sold his TIPIF but has refused to inform him of the exact prices and times of the trades. Claimant further asserted that respondent's actions were improper and the money which is due to him should be returned.

Claimant Mike Deming sought to join claimant Bryan Kittelberger in his complaint against respondent Investors Associates, Inc. The Arbitrator did not consider the submissions of claimant Mike Deming.

Respondent Investors Associates, Inc., by its representative Lawrence R. Gelber, Esq., of the law firm Beigel, Lasky, Rifkind, Fertik, Gelber & White, located in New York, maintained that claimant was aware of the effect that the sale of 15,000 shares would have on the market. Respondent further maintained that claimant placed a sell order with the instruction that the sale was "to be worked". Respondent also maintained that claimant's TIPIF were sold according to claimant's instructions. Respondent requested dismissal of the claim and maintained that the claimant ratified the transactions.

RELIEF REQUESTED

Claimant Bryan Kittelberger requested \$6,430.50 in actual damages, interest of \$578.75 and punitive damages of \$2,921.25.

Respondent Investors Associates, Inc. requested dismissal of claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to Section 10314(d)(4) of the NASD Code of Arbitration Procedure, the claims of claimant/"Third Party Complainant" Mike Deming and related submissions were not considered by the Arbitrator. Mike Deming may initiate separate NASD arbitration proceedings.

The Arbitrator reviewed and considered all submissions regarding the claimant's Motion for Default Judgment and respondent's Motion to Dismiss. The Arbitrator denied the motions.

AWARD

Pursuant to Section 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, Donald T. Cook, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Bryan Kittelberger on June 4, 1996 and not by respondent Investors Associates, Inc., as is required by 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. Respondent Investors Associates, Inc., is liable and shall pay to claimant Bryan Kittelberger \$6,430.50 in actual damages.
2. Respondent Investors Associates, Inc., is liable and shall pay to claimant Bryan Kittelberger interest at the rate of 9% per annum from August 23, 1995 to the date of payment of the award.
3. Of the \$400.00 filing fee deposited to NASD Regulation, Inc., by the claimant Bryan Kittelberger, \$150.00 shall be retained and \$250.00 refunded. Respondent Investors Associates, Inc., is liable and shall pay \$150.00 to the claimant Bryan Kittelberger, as reimbursement of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, **DONALD T. COOK, 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.

A handwritten signature in cursive script that reads "Donald T. Cook". The signature is written in dark ink and is positioned above a horizontal line.

Signature of Arbitrator

DATE OF DECISION: February 6, 1997