

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Peter Kellogg Bertine, Jr.

96-02588

Name of Respondents

National Discount Brokers
Joe McKenna

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 17, 1996, Claimant Peter Kellogg Bertine, Jr. ("Claimant"), who appeared Pro Se, alleged that on March 7, 1996 he entered an order for 500 shares of Comparator ("IDID") common stock. Claimant further alleged that this order was entered through Respondent National Discount Brokers' ("NDB") touch tone telephone computer system ("Power Broker"). Claimant also alleged that shortly after he entered his order, he was notified that he had ordered 5000 shares of IDID. Claimant asserted that Power Broker had mistakenly entered his order for 5000 shares of IDID instead of 500 shares. Claimant further asserted that he immediately complained to NDB and was told that he should pay for the 5000 shares. Claimant also asserted that in order to satisfy the margin call, NDB sold his holdings at a loss. Claimant contended that Respondent Joe McKenna ("McKenna") was the registered representative at NDB who was responsible for making decisions about this dispute. Claimant further contended that he suffered a loss which should be returned to him.

In an amendment to the Statement of Claim, Claimant alleged that after he complained to NDB he was given the impression that the error had been corrected. Claimant further alleged that he purchased 1000 additional shares of IDID and thought that his total purchases were 1500 shares. Claimant also alleged that NDB later informed him that he owned 6000 shares of IDID. Claimant asserted that after the first order for 500 shares he waited 45 minutes to get confirmation. Claimant further asserted that when he called to complain he "had no idea that the stock would drop." Claimant also alleged that NYNEX phone records provided proof of his claim.

Respondents National Discount Brokers and Joe McKenna ("Respondents"), through their Director of Compliance, Neville Golvala, maintained that Claimant created a debit balance and refused to satisfy that debit balance. Respondents further maintained that they were forced to sell a sufficient number of shares in order to satisfy the Claimant's debit balance. Respondents also maintained that McKenna was named incorrectly since he could not authorize any transactions. Respondents asserted that McKenna's duties included investigating complaints and reporting on his findings. Respondents further asserted that Claimant placed two orders for 5000 shares and 1000 shares of IDID respectively. Respondents also asserted that NDB is a brokerage firm which operates on an agency basis only. Respondents contended that NDB does not solicit orders or provide investment advice. Respondents further contended that the price of IDID fell more than 6% in value between the time the Claimant received his confirmation and the time he filed his complaint with NDB's customer service department. Respondents also contended that Claimant's claims should be dismissed since the recorded strokes on the touch tone telephone proved that Claimant had ordered 5000 shares of IDID.

RELIEF REQUESTED

Claimant Peter Kellogg Bertine, Jr. requested \$7,000 in actual damages.

Respondents National Discount Brokers and Joe McKenna requested costs and legal fees, that the claims be dismissed, and that this matter be "expunged from Joe McKenna's permanent record".

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Michael E. Curan Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Peter Kellogg Bertine on June 11, 1996, by Respondent National Discount Brokers on July 25, 1996 and by Respondent Joe McKenna on August 12, 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 Peter Kellogg Bertine, Jr. against Respondents National Discount Brokers and Joe McKenna is dismissed in its entirety.

2. Based on the merits of this case, the claim of Claimant Peter Kellogg Bertine, Jr., against Respondent Joe McKenna, shall be expunged from Joe McKenna's permanent CRD record by NASD Regulation, Inc.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.
5. All other relief requests are denied.

AFFIRMATION

I, **MICHAEL E. CURAN, ESQ.**, do hereby swear or 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.



Signature of Arbitrator

DATE OF DECISION: December 19, 1996