

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Soft Solution, Inc.

96-02599

Name of Respondents

Sherwood Capital, Inc.
Triak Services Corp. d/b/a/ National Discount Brokers

REPRESENTATION

For claimant Soft Solution, Inc. ("Soft Solution") appeared Eric Hovdesven, Esq. of the law firm Sadler & Associates, P.C. located in Atlanta, Georgia.

For respondents Sherwood Capital, Inc. ("Sherwood") and Triak Services Corp. d/b/a National Discount Brokers ("NDB") appeared David Robbins, Esq. of the law firm Kaufmann, Feiner, Yamin, Gilden & Robbins located in New York, New York.

CASE INFORMATION

Statement of Claim filed: June 17, 1996.

Claimant's Submission Agreement signed on: June 3, 1996.

Statement of Answer filed by respondent NDB on: August 8, 1996.

Respondent NDB's Submission Agreement signed on: August 6, 1996.

Statement of Answer filed by respondent Sherwood on: August 26, 1996.

Respondent Sherwood's Submission Agreement signed on: August 16, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: April 23, 1997 - two sessions

The hearing was conducted at the Terrace Garden Hotel located at 3405 Lennox Road in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that it is entitled to recovery of damages for respondents unauthorized rescission of a valid and complete stock transaction and/or for the respondents reckless business practices and resultant erroneous advice in connection with the sale of claimant's restricted stock. Claimant further alleged that in June of 1994 it received 37,992 restricted shares of Premier Anesthesia, Inc. ("PAI") in lieu of a cash payment for services rendered that company. Claimant also alleged that it had little experience with securities trading and contacted NDB because its advertising. Claimant further contended that NDB was informed that it wanted to sell the PAI shares but was concerned about restrictions. Claimant contended that the stock certificate was provided to NDB and that Carl Steiniger, a NDB employee, stated that the shares could be sold. Claimant further contended that 7,792 shares were sold on August 23, 1994. Claimant also contended that NDB and Sherwood are wholly owned by the Sherwood Group, Inc. and that Sherwood purchased the 7,792 PAI shares.

Claimant asserted that the day after the sale, he was informed by James Romanowski, a NDB employee, that there had been an error because the PAI shares were untradeable. Claimant further asserted that the shares were repurchased back from Sherwood for \$3.94 per share although Sherwood had just purchased the shares for \$2.50 a few days earlier. Claimant also asserted that this created a debit balance in the account which it was led to believe would be borne by NDB. Claimant also asserted that in February of 1996, 17,484 PAI shares were sold to cover the debit in the account--Claimant believed the debit had been erased in September of 1994--and that the remainder of the shares were delivered out to it. Claimant alleged that as a result of the above, the respondents should be held liable for its damages.

Respondent NDB maintained that claimant delivered to it restricted PAI shares and followed claimant's request to sell some of those shares. Respondent further maintained that it turned out that the shares were not marketable so it covered the short position in the marketplace creating a debit balance in the account. Respondent also maintained that claimant refused to cover the debit causing it to hold and eventually sell the shares 1 1/2 years later once they became registered covering the debit.

Respondent contended that when claimant first gave instructions to sell the PAI shares no mention of the restriction was made. Respondent further contended that because claimant did not inform its employees of the attendant restrictions, the shares were sold but upon receipt of the stock certificate claimant was informed of the resultant problem. Respondent also contended that it is a discount brokerage firm and does not give advice concerning transactions and as such would not have given advice to claimant as he alleged. Respondent asserted that claimant's allegations are inconsistent because claimant claims not to have had knowledge of the securities business yet he was aware that he held restricted securities and had the presence of mind to present this information to NDB. Respondent further asserted that it would not have sold these shares had claimant informed it of the restrictions beforehand. Respondent maintained that as a result of the above, it should not be held liable.

Respondent Sherwood maintained that it wishes to incorporate by reference the NDB's Answer. Respondent further maintained that no substantive allegations were made against it in the claim.

Respondent maintained that it has no relationship with NDB's individual investors but does maintain a business relationship with NDB. Respondent further maintained that NDB receives a standard compensation from it for transactions which it completes for NDB.

Respondent contended that as a business it maintains an inventory of a particular company's securities, holding itself open, on a continuing basis, as willing to buy and sell those securities. Respondent further contended that claimant placed the self-directed sell order for shares of PAI and that this order was routed to it by NDB. Respondent also contended that it had no reason to believe that claimant would not deliver marketable shares at the time the trade was executed. Respondent asserted that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Soft Solutions, Inc. requested enforcement of the contract to sell 7,992 shares of PAI to respondents. Claimant further requested 9,472 shares which is the difference between the 7,992 shares from the original contract subtracted from the sale of 17,484 shares in February of 1996. Claimant also requested interest at the rate of 6% from August 1994. In the alternative, claimant requested \$12,541.53 representing the proceeds from the sale of PAI shares in February of 1996 plus 6% interest from the sale date. In addition, claimant requested attorney's fees of one-third of all sums awarded plus forum costs of \$500.00.

Respondents National Discount Brokers and Sherwood Securities, Inc. requested that the claims be dismissed in their entirety plus reimbursement for costs and legal fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant Soft Solutions, Inc. against respondent Sherwood Securities, Inc. be and hereby are dismissed with prejudice.
2. Respondent Triak Services Corp d/b/a National Discount Brokers be and hereby is liable and shall pay to claimant Soft Solutions, Inc. \$12,541.63 in damages.
3. The parties shall bear their respective attorney's fees and costs.
4. All other relief requests are denied in their entirety.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

two sessions x \$400.00	= \$800.00
minus claimant's \$400.00 deposit	= \$400.00
total outstanding	= \$400.00

Respondent Triak Services Corporation d/b/a National Discount Brokers be and hereby liable for the sum of \$800.00 representing the total amount of forum fees assessed. Therefore, respondent NDB shall pay to claimant Soft Solutions \$400.00 as reimbursement of the hearing session deposit and \$400.00 to NASD Regulation in satisfaction of outstanding forum fees.

In addition, respondent NDB be and hereby is liable and shall pay to claimant Soft Solutions \$200.00 for reimbursement of the non-refundable filing fee.

ARBITRATORS' SIGNATURES

I, Sidney R. Barrett, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Sidney R. Barrett, Esq.
Public Chairperson

I, William B. Brown, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

William B. Brown, Esq.
Public Arbitrator

I, Harold F. Hunter, Jr., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Harold F. Hunter, Jr.
Industry Arbitrator

Date of Decision: May 16, 1997

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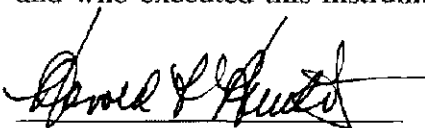
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