

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

James M. Moscato, Jr.

96-02727

Name of Respondent

Richard Carter

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on August 16, 1996 James M. Moscato, Jr. ("claimant"), who appeared Pro Se, alleged that he is a disabled veteran living on a fixed income. Claimant further alleged that Richard Carter ("respondent") was his broker and was employed at Oppenheimer and in December 1995 he received a call from respondent advising him that Chadmoore Wireless ("Chadmoore") was going to be bought out and he could make a quick twenty or thirty thousand dollars. Claimant also alleged that when he asked what he had to do to earn this money respondent told him he didn't have to do anything and that he would take care of it. Claimant asserted that he next received a buy slip for 25,000.00 of Chadmoore and when he asked respondent about the purchase he was told not to worry and just sit back and wait. Claimant further asserted that respondent then sold the Chadmoore stock at a loss. Claimant alleged that respondent switched to Everen, another brokerage house and claimant's shares of Gaylord Container ("Gaylord") were sold to pay the debt of the Chadmoore purchase. Claimant also asserted that he lost all of his shares of Gaylord and ended up with a debt to Oppenheimer of \$5,746.56. Claimant contended that respondent also made another unauthorized trade in January of 1996 when he was at Everen. Claimant further contended that respondent engaged in unauthorized trading, insider trading and that Oppenheimer failed to supervise the respondent. Claimant also contended that he tape recorded the telephone conversations he had with the respondent because he has a poor memory. Claimant maintained that he is not seeking any money that may be owed to Oppenheimer.

Respondent, Richard Carter, through his representatives and counsel, Robert C. Rubenstein, Esq. and Leslie A. Blau, Esq., of the law firm Blau & Bonavich, located in Chicago, Illinois maintained that claimant had an account with Oppenheimer and Everen and on information and belief previously had traded a high risk low capitalized issue through Bear Stearns. Respondent further maintained that he and the claimant had a number of conversations regarding the purchase of the Chadmoore stock and at Claimant's request, respondent, on or about December 11, 1995 purchased 5,000 shares of Chadmoore. Respondent also maintained that after the purchase, claimant became

seeking to collect the debit balance of \$5,746.56 therefore the only loss claimant may have suffered was \$983.96 when his Gaylord stock was sold. Respondent also contended that claimant told him that he wanted a quick and profitable trade to make up for damages he suffered when he wrecked his truck. Respondent alleged that the audio tapes sent to the arbitrator were selectively edited to eliminate those portions referring to Claimant's risk taking character and his reestablishing his stock position in Chadmoore through Everen. Respondent further alleged that he had to sell the Chadmoore stock and cover the \$2,500.00 loss out of his own pocket.

RELIEF REQUESTED

Claimant James M. Moscato requested damages in the amount of \$6,250.00.

Respondent Richard Carter requested that claimant's claims be dismissed.

AWARD


Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Robert Gleichenhaus, Esq. was selected to review the matter in controversy between the parties set forth in the Submission to Arbitration signed by claimant James M. Moscato, Jr. on June 24, 1996 and by respondent Richard Carter on October 11, 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 Richard Carter be and hereby is liable and shall pay to the Claimant James M. Moscato, Jr. \$1,500.00 plus interest at the rate of 9% per annum from August 1, 1996 until the award is paid.
2. Respondent Richard Carter must indemnify Claimant James M. Moscato with regard to any claim on this matter made by Oppenheimer against the Claimant.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation Inc. by claimant shall be retained by NASD Regulation, Inc. Respondent Richard Carter shall pay to claimant \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, Robert Gleichenhaus, Esq., do hereby 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.


Robert Gleichenhaus, Esq.

Date of Decision: June 5, 1997