

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Anna M. and Anthony T. Perna

96-02771

Name of Respondents

Nicholas P. Barbieri  
Quick & Reilly, Inc.

REPRESENTATION

Claimants Anna M. And Anthony T. Perna ("Claimants") were represented by Anthony J. Hom, Esq., Philadelphia, PA.

Respondents Nicholas P. Barbieri ("Barbieri") and Quick & Reilly, Inc. ("Q&R") were represented by Elizabeth Hoop Fay, Esq., Morgan, Lewis & Bockius, Philadelphia, PA.

CASE INFORMATION

The Statement of Claim was filed June 27, 1996.

Claimants' Amended Statement of Claim was filed May 7, 1997.

Claimants' Uniform Submission Agreement was signed June 24, 1996.

The Joint Statement of Answer of Barbieri and Q&R (collectively "Respondents") was filed September 16, 1996.

Respondents Joint Statement of Answer to the Amended Statement of Claim was filed June 4, 1997.

Barbieri's Uniform Submission Agreement was signed September 12, 1996.

Q&R's Uniform Submission Agreement was signed September 16, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:      June 11, 1997/two sessions  
   June 12, 1997/one session

Hearing Location:              NASD Regulation District Office  
   Philadelphia, PA

CASE SUMMARY

Claimants alleged that Respondents failed to execute an order issued in writing on October 28, 1995 to purchase Bay Networks common stock to cover a short sale of 100 Bay Networks common stock. Claimants alleged that prior to and subsequent to this order, Respondents had executed orders on behalf of Claimants without price in position. Claimants alleged that as a result of Respondents' failure to

execute the written order of Claimants to cover the short position, Claimants were subject to numerous margin calls which resulted in the liquidation of a number of stock positions resulting in losses. Claimants maintained that Respondents' negligent failure to execute the Claimants written instructions constituted a breach of contract, a breach of fiduciary duty, violations of federal and state securities laws and violations of the rules and regulations of the NASD as well as other securities exchanges of which Respondents are members. Claimants alleged that Q&R was negligent and failed to adequately supervise Barbieri in the performance of his duties.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Claimants' instructions included in a letter were an authorization to cover a short position in Claimants' account, not an explicit order. Respondents maintained that an order must contain specific information such as whether it is to buy or sell, the quantity, the name or symbol of the stock and the price desired for execution. Respondents maintained that this information must be given to the broker by the customer so that the order can be properly carried out as Respondents do not exercise any discretion in customers' accounts. Respondents maintained that Claimants had a history of entering orders which did not contain the required information though sometimes their orders were complete. Respondents maintained that the letter written October 28, 1996 -- the order to which Claimants refer in this arbitration -- gave no price criteria nor did it specify whether the Claimants wanted to purchase this position at the market or at a limit price. Respondents further maintained Claimants failed to follow through on this request to determine if it had been executed. Respondents maintained that Claimants' monthly statements showed the short position of Bay Networks in Claimants' account and Claimants never requested a confirmation of the transaction.

Respondents maintained that there no unauthorized trades in Claimants' account at any time and any liquidation to meet margin calls was according to the margin account agreement which Claimants had with Respondents. Respondents maintained that Claimants were contributorily negligent in the management of their account and that they failed to mitigate any alleged losses.

#### **RELIEF REQUESTED**

Claimants requested relief of \$37,595.00, plus interest from the date the losses were incurred to the date of the arbitration hearing, plus attorney's fees, costs and any other damages the panel feels appropriate.

Respondents requested that Claimants' Statement of Claim be dismissed in its entirety.

#### **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 the NASD.

**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. That the Statement of Claim is denied in its entirety.
2. That the claim for punitive damages and/or treble damages is denied.
3. That each party shall bear its own costs and expenses with the exception of the Forum Fees as discussed below.
4. That any and all relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions x \$600.00 = \$1,800.00

Forum Fees are assessed at \$900.00 to Claimants and \$900.00 to Respondents, jointly and severally. Claimants will receive credit for the \$600.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimants of \$300.00. Respondents have a net assessment due of \$900.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

6/22/97

Barbara A. Ash  
Barbara A. Ash, Presiding  
Public Arbitrator

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Chess B. Faircloth  
Public Arbitrator

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Ronald C. Zimmerman  
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 30, 1997

**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. That the Statement of Claim is denied in its entirety.
2. That the claim for punitive damages and/or treble damages is denied.
3. That each party shall bear its own costs and expenses with the exception of the Forum Fees as discussed below.
4. That any and all relief not specifically addressed herein is denied.

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Barbara A. Ash, Presiding  
Public Arbitrator

6/19/97

Chess B. Faircloth  
Chess B. Faircloth  
Public Arbitrator

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Ronald C. Zimmerman  
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 30, 1997

**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. That the Statement of Claim is denied in its entirety.
2. That the claim for punitive damages and/or treble damages is denied.
3. That each party shall bear its own costs and expenses with the exception of the Forum Fees as discussed below.
4. That any and all relief not specifically addressed herein is denied.

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