

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Michael Zinger

Claimant,

v.

Case Number 96-03221

Ceres Securities, Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimant Michael Zinger ("Claimant") appeared pro se.

Respondent Ceres Securities, Inc. ("Respondent" or "Ceres Securities") was represented by Mary K. Fay, President of Ceres Securities, Inc. Respondent was previously represented by Patrick B. Griffin, Esq. of Kutak Rock located in Omaha, Nebraska.

CASE INFORMATION

The Statement of Claim was filed on or about July 17, 1996.

Claimant's Submission Agreement was signed on July 8, 1996.

Respondent's Statement of Answer was filed on or about September 27, 1996.

Respondent's Submission Agreement was signed on September 18, 1996 by Mary K. Fay, President of Ceres Securities, Inc.

Claimant's Post-Hearing Submission was filed on or about May 30, 1997. Respondent's Post-Hearing Submission was filed on or about May 30, 1997.

HEARING INFORMATION

The hearing was held on May 27, 1997 for one (1) session in Milwaukee, Wisconsin.

CASE SUMMARY

Claimant alleged that he had a position in 200 shares of Iomega Corp. ("IOMG") at \$23 3/4. Claimant contended that he called his broker at Ceres Securities and placed an order to sell the 200 shares of IOMG if the price reached \$20. In the Statement of Claim, Claimant stated "It's common sense that you use limit order to sell either in expectation of rising stock or to prevent losses if the price is going down, otherwise you just use the market order." Claimant asserted that two hours after he placed the order he received a message on his answering machine that the stock sold at \$20 5/8. Claimant maintained that at the time of the sale the price of IOMG never fell below \$22. Claimant alleged that he called Ceres Securities and was told that a mistake occurred and that the stock was actually sold at \$22 5/8 although the confirmation slip will show the sale at \$20 5/8. Claimant contended that he never received a confirmation slip. Claimant asserted that representatives of Ceres Securities attempted to cover up a fraudulent trade by attempting to prove that an order may be executed below market price. Claimant also alleged that Ceres Securities manipulated the trade in order to profit from the exchange and cover another account's short position.

Respondent denied all liability to Claimant in the Statement of Answer and maintained that its conduct with respect to Claimant's order was proper in all respects. Respondent alleged that Claimant placed an order to sell 200 shares of IOMG at a limit price of \$20 per share. Respondent contended that Claimant's order was read back and confirmed to be correct by Claimant. Respondent alleged that Claimant did not understand the difference between a limit order and a stop order. Respondent contended that it appears that Claimant really wanted a stop order, rather than a limit order. Respondent stated that Claimant is responsible for knowing the difference between the various types of orders and specifying the orders accordingly. Respondent asserted that although the order was executed at 22 5/8, Claimant received a voice confirmation of a fill price of 20 5/8 due to a data entry error. Respondent maintained that Claimant was subsequently notified on the day of the sale of the actual fill price and a written confirmation was sent the same day showing the correct fill price of 22 5/8. Respondent denied that it manipulated his trade in order to profit from the exchange and cover another account's short position.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,918, an award of all costs and disbursements incurred in this matter, including arbitration fees and travel expenses, and an award of punitive damages in the amount of \$1,918.

Respondent requested the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

There were no other issues considered and decided.

AWARD

After considering the pleading, the testimony, the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$100 per hearing session. There were one (1) hearing sessions x \$100 = \$100 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$50 and shall retain as forum fees a portion of the hearing session deposit in the amount of \$50 (1/2 total forum fees) previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

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Pursuant to §10332(c) of the Code, Respondent Ceres Securities, Inc. is liable for and shall pay forum fees in the amount of \$50 (1/2 total forum fees).

Pursuant to §10333 of the Code, Respondent Ceres Securities, Inc. is liable for and shall pay the member surcharge in the amount of \$100.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Arbitrator's Signature



Herbert S. Bratt, Esq.
Public Arbitrator

June 11, 1997
Dated:

For NASD Regulation use only:

Date award served on the parties: JUNE 11, 1997