

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sonja C. Smith

96-03365

Name of Respondent

Brown & Company Securities Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 5, 1996, claimant Sonja C. Smith ("claimant"), who appeared Pro Se, alleged that on September 14, 1995 she placed an order with respondent Brown & Company Securities Corporation ("respondent") to sell her 200 shares of FileNet Corporation ("FileNet") common stock. Claimant further alleged that instead of a sell order, respondent erroneously entered a buy order. Claimant also alleged that respondent acknowledged its error, but has not acted responsibly in providing full reimbursement for her loss. Claimant contended that respondent credited her account for \$2,000.00, but should reimburse her for the entire transaction loss. Claimant further contended that regardless of the condition or disclaimers invoked by respondent to protect itself, that respondent should be responsible for the economic consequences of its error.

Respondent Brown & Company Securities Corporation, through its in-house counsel and Director of Compliance, Susan M. Boudrot, Esq., maintained that it is a discount brokerage firm. Respondent further maintained that it gives no advice to customers and expects customers to monitor their own accounts. Respondent also maintained that it mistakenly entered claimant's sell order as a buy and sent written confirmation of the purchase to the claimant on September 15, 1995. Respondent contended that claimant waited until October 10, 1995 to provide notification of the error. Respondent further contended that upon opening her account, claimant signed a Cash and Margin Agreement wherein she agreed to notify respondent, in writing, within ten days of any error. Respondent also contended that the claimant had a duty to mitigate any damages by promptly notifying respondent of the error. Respondent asserted that claimant has been given \$2,000.00 for the error and further asserted that it should not be held liable for the claimant's entire loss. Respondent maintained that the price of FileNet declined by \$8.75 per share, for a total loss of \$3,500.00 during the time that claimant failed to notify respondent of the error.

RELIEF REQUESTED

Claimant Sonja C. Smith requested \$1,552.29 in actual damages, plus costs.

Respondent Brown & Company Securities Corporation requested that it not be held responsible for claimant's entire loss.

AWARD

Pursuant to Section 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, Gary O'Donnell, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Sonja C. Smith on July 31, 1996 and by respondent Brown & Company Securities Corporation on August 30, 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 claims of claimant Sonja C. Smith against Brown & Company Securities Corporation are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant Sonja C. Smith shall be retained by NASD Regulation, Inc. Respondent Brown & Company Securities Corporation shall pay to the claimant Sonja C. Smith \$50.00 as reimbursement of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, GARY O'DONNELL, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: February 11, 1997