

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Warren Herman

96-04111

Name of Respondents

Nationwide Securities Corporation
David Lavender
Marco Fiore
Howard Zelin

Name of Crossclaim Claimant

David Lavender

Name of Crossclaim Respondent

Nationwide Securities Corporation

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 16, 1996, claimant Warren Herman ("claimant"), who appeared Pro Se, alleged that respondents Nationwide Securities Corporation ("Nationwide"), David Lavender ("Lavender"), Marco Fiore ("Fiore"), and Howard Zelin ("Zelin") failed to execute trades in his account. Claimant further alleged that on February 28, 1996, he purchased 500 shares of Thermo-Mizer Environmental Corp. (THMZ) common stock and 500 Warrants (THMZW) in an IPO, and 500 shares in the after market. Claimant also alleged that on March 7, 1996, he had a conversation with his broker Lavender, where they agreed to sell his entire position in THMZ common stock at \$6.25 per share. Claimant asserted that on March 14, 1996 and March 15, 1996 he contacted Lavender and informed him that he had not received the confirmation for the March 7, 1996 sale order. Claimant further asserted that Lavender told him that there were computer problems and that he would be sending the confirmation. Claimant also asserted that on March 18, 1996, he directly asked Lavender if the stock was sold, and Lavender verbally confirmed that the stock was sold. Claimant contended that he instructed Lavender that if the common stock was not sold, he should sell 500 shares of THMZW warrants at \$3.25 per share.

Claimant further contended that on March 26, 1996, he spoke with Fiore, who told him that he would make sure that the confirmations for the sale of 1000 shares of THMZ and the sale of 500 THMZW warrants would be faxed to him by the end of the day. Claimant also contended that on March 27, 1996, he called Lavender again, however Lavender's assistant April Socci ("Socci") answered the phone and checked his account to verify that the trades had been executed. Claimant alleged the Socci told him that his account was still holding 1000 shares of THMZ and 500 THMZW warrants. Claimant further alleged that he called and spoke with Nationwide's Compliance Department, who did nothing to resolve the matter.

Respondent David Lavender, who appeared Pro Se, maintained that he began to experience a recurrent problem with Nationwide, although Nationwide's customer purchase order were being executed and processed, the customer sale orders were not. Respondent Lavender further maintained that Nationwide would not except a sell order, unless the broker submitted a matching buy order for another customer. Respondent Lavender also maintained that he was unaware of Nationwide's policy during the first few weeks of March, which resulted in his repeated inquiry about the execution of the claimant's sale order. Respondent Lavender contended that he is not at fault for his orders not being executed. Respondent further contended that it is apparent Nationwide's policies are designed in such a way that a customer is held hostage if the account executive is unwilling, or unable to procure a new buyer for the stock in which they make a market.

Respondent Lavender in a cross-claim against Nationwide alleged that the practice of Nationwide has caused him to be named as a respondent in this action. Respondent further alleged that Nationwide failed to settle this matter with claimant prior to this arbitration proceeding, which will remain with him for the rest of his professional life.

Respondent Howard Zelin through his representative and counsel, Vincent Leatini of the law firm Doros & Brescia P.C. located in New York City, New York maintained that he was not claimant's broker, nor was he the registered Compliance Officer or registered in any supervisory capacity, with Nationwide.

Respondent Nationwide Securities Corporation failed to file an Answer to the Statement of Claim.

Respondent Marco Fiore failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Warren Herman requested (1) \$6,250.00 for the sale of 1000 shares of THMZ common stock at \$6.25; (2)\$1,625.00 for the sale of 500 THMZW warrants at \$3.25; (3)\$206.00 for accrued interest at 5.25% from March 18, 1996 through September 18, 1996.

Respondent Lavender requested the claims of claimant against him be dismissed in their entirety.

Respondent Lavender in his cross-claim against Nationwide requested that any award in favor of claimant against him be paid for by Nationwide, plus \$50,000.00 in punitive damages.

Respondent Zelin requested that the claims of claimant against him be dismissed in their entirety, plus costs and attorneys' fees.

Respondent Nationwide Securities Corporation did not file an Answer to the Statement of Claim.

Respondent Marco Fiore did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 10302 of the Code of Arbitration Procedure, respondents Nationwide Securities Corporation and Marco Fiore, were served by regular mail and given an opportunity to respond, which they failed to do. In addition, service of the overdue answer notice and notification of the Arbitrator's identity was effected upon respondents Nationwide Securities Corporation and Marco Fiore, as evidenced by the signed signature cards on file at the NASD Regulation, Inc.

Pursuant to the By-Laws of the NASD Regulation, Inc., the arbitrator determined that respondents Nationwide Securities Corporation and Marco Fiore had notice of the claim, and were required to submit to this arbitration proceeding; and are therefore bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Frederick M. Joseph, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Warren Herman on September 12, 1996 and by respondent David Lavender on October 30, 1996 and by Howard Zelin on October 15, 1996 and not by respondents Nationwide Securities Corporation and Marco Fiore as is required by Section 10301 and 10302 of the Code of Arbitration Procedure.

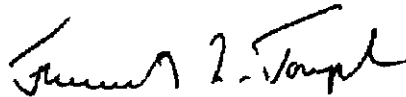
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Nationwide Securities Corporation, David Lavender and Marco Fiore be and hereby are jointly and severally liable and shall pay claimant Warren Herman the sum of \$7,850.00 in actual damages.
2. Respondents Nationwide Securities Corporation, David Lavender and Marco Fiore be and hereby are jointly and severally liable and shall pay claimant Warren Herman interest at the rate of 5 1/2% per annum from March 18, 1996 to date of the award.
3. Crossclaim Respondent Nationwide Securities Corporation be and hereby is liable to reimburse Crossclaim Claimant David Lavender to the extent of Crossclaim Claimant David Lavender's payment to the claimant Warren Herman.
4. The claims of claimant Warren Herman against respondent Howard Zelin are dismissed in their entirety.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by the NASD Regulation, Inc. Respondents Nationwide Securities Corporation, David Lavender and Marco Fiore be and hereby are jointly and severally liable and shall pay claimant Warren Herman the sum of \$150.00 as reimbursement of the filing fee.

6. Crossclaim Claimant David Lavender shall pay \$575.00 in Crossclaim fees to National Association of Securities Dealers Regulation, Inc.
7. All other relief requests are denied.

AFFIRMATION

I, **Frederick M. Joseph, 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.

A handwritten signature in cursive script, appearing to read "Frederick M. Joseph", is written over a horizontal line.

Frederick M. Joseph, Esq.

Date of Decision: February 5, 1997