

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

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In the Matter of the Arbitration Between

Name of Claimant

Aaron Solomon

96-04257

Name of Respondents

Tom Ishak  
State Street Capital Markets

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**REPRESENTATION**

Claimant Aaron Solomon ("Claimant") appeared pro se.

Respondent Tom Ishak ("Ishak") appeared pro se.

Respondent State Street Capital Markets ("State Street") did not appear at the hearing in this matter.

**CASE INFORMATION**

Statement of Claim filed on: September 27, 1996.

Claimant's Submission Agreement signed on: September 24, 1996.

Statement of Answer filed by Respondent Ishak on: December 06, 1996.

Respondent Ishak's Submission Agreement signed on: December 18, 1996.

Statement of Answer filed by Respondent State Street on: November 15, 1996.

Respondent State Street failed to file a properly executed Submission Agreement as required by Rule 10314(b) of the NASD Regulation, Inc. Code of Arbitration Procedure (the "Code").

**HEARING INFORMATION**

Pre-Hearing Conference:	June 30, 1997	One Session
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Hearing Dates/Sessions:	August 12, 1997	One Session
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	September 11, 1997	Two Sessions
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The pre-hearing conference was held telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant alleged that on August 26, 1996 at approximately 3:30 PM, he called State Street to sell 3000 shares of Fun Tyme Concepts, Inc. ("FUNTU"), and was told by a secretary that his broker had left for the day. Claimant alleged that he then asked to be connected to the compliance department so he could sell his stock. Claimant alleged he was transferred to everyone except for the compliance department and since it was after 4:00 PM he could not sell his stock.

Claimant alleged that he contacted Ishak that night and told him that he wanted a market order placed at 9:30 AM to sell 3000 shares of FUNTU. Claimant alleged that the stock opened on August 27 at 8 1/4. Claimant alleged that he spoke to Ishak at 9:10 AM that morning and was told that the order would be placed. Claimant alleged that he then tried to contact Ishak from 9:30 AM to 11:00 AM and was told Ishak was in a meeting. Claimant alleged that he contacted the compliance department and he was told that it would be executed. Claimant alleged that he then spoke to Ishak at 11:00 AM and repeatedly instructed him to sell the FUNTU stock.

Claimant also alleged that he inquired about various other stocks which Claimant had been told were sold at his request; however, he was told that in fact they were never sold. Claimant alleged that he then instructed Ishak to liquidate the positions in his account.

Claimant alleged that he contacted Ishak at 2:00 PM and was told that the shares of FUNTU were sold at \$6.00 per share but that the other three stocks Claimant wanted sold, were not, since there were no buyers. Claimant alleged that although he requested that market orders be placed on his remaining stocks they were never sold and the stocks declined in value.

Claimant alleged that it was not until he personally went to State Street that his instructions to liquidate his positions were executed. Claimant alleged that as a result of the Respondents failure to sell his stock the price of same declined causing significant losses in his account.

Respondent Ishak maintained that he kept in constant contact with Claimant and made all reasonable efforts to execute the sell order which Claimant directed. Ishak further maintained that State Street, without his knowledge, failed to execute the sell order given by Claimant in a timely manner. Ishak also stated that at all times he followed Claimant's instructions regarding his account, and that the failure of the sell orders to be executed is the fault of State Street.

Ishak asserted that Claimant called him on the evening of August 26, 1996, and requested that all his shares of FUNTU be sold. Ishak further asserted that when he arrived at State Street the following morning he immediately submitted a sell order for all 3000 shares of FUNTU owned by Claimant. Ishak also maintained that after submitting the sell order, he attended a meeting and upon his return he learned that his sell order for Claimant, as well as the sell orders of other brokers, had not been executed. Ishak stated that he contacted Claimant to inform him of the situation, and Claimant in response, ordered the liquidation of his account. Ishak further stated that he attempted to do so, but that State Street never executed it the liquidation request.

Respondent State Street maintained that Claimant authorized and received confirmations of all transactions, and that prior to this action had never registered a written complaint with them about the handling of his account. Respondent State Street further maintained that the losses allegedly suffered by Claimant and its inability to execute Claimant's sell orders were caused by market forces and conditions beyond their control.

Respondent State Street, in its Crossclaim, asserted that if they are found liable to Claimant, that it was the actions of Ishak that made it so, and therefore, State Street must be indemnified by Ishak. State Street further asserted that if Ishak stated to Claimant that due to the conduct of certain State Street employees his securities could not be sold, then Ishak violated internal State Street guidelines and breached his employment contract with it, as well as, his duty of loyalty to it.

### **RELIEF REQUESTED**

Claimant requested damages of \$25,985.00.

Respondent Ishak requested that the Statement of Claim be dismissed in its entirety and that he be awarded costs and disbursements.

Respondent State Street in their Statement of Answer and Crossclaim requested:

- (a) that the Statement of Claim be dismissed in its entirety;
- (b) all costs, including attorneys' fees, be assessed against Claimant;
- (c) all costs that it may be liable for be assessed against Respondent Ishak; and
- (d) all other and such relief that the panel deems just and proper.

### **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 original remains on file with the NASD.

The panel made the following determinations concerning Respondent State Street, who did not file a Submission Agreement and who did not appear at the hearing in this matter:

1. The panel found that Respondent State Street was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code.
2. In addition, in accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that NASD Regulation provided Respondent State Street with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Respondent State Street whose absence was unexcused.

### **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. Respondent Ishak is liable and shall pay to Claimant damages in the amount of \$6,182.00.
2. Respondent State Street is liable and shall pay to Claimant damages in the amount of \$19,803.00.
3. Respondent State Street's Cross Claim against Ishak is dismissed in its entirety.
4. Each party shall bear their respective costs, including attorneys' fees.

5. All other requests for relief are denied.

**FORUM FEES**

Pursuant to Rule 10332 of the Code, the arbitrators have determined that the NASD will retain the \$100.00 non-refundable filing fee and the \$400.00 hearing session deposit paid by Claimant and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
3 Hearing sessions x \$400.00	=	<u>\$1,200.00</u>
Total Forum Fees	=	\$1,500.00
Hearing Session Deposit	=	<u>(\$ 400.00)</u>
Balance Due NASD Regulation, Inc.	=	\$1,100.00

1. Respondent Ishak be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$366.66 representing one-third of the forum fee balance due.
2. Respondent State Street be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$733.34 representing two-thirds of the forum fee balance due.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES

I, Robert D. Herschman, 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 D. Herschman, Esq.  
Chairperson - Public Arbitrator

I, Joan M. Traub, 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.

Joan M. Traub, Esq.  
Panelist - Public Arbitrator

I, Dominick J. Dorata, 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.

Dominick J. Dorata, Esq.  
Panelist - Industry Arbitrator


Date of Decision: January 2, 1998

ARBITRATORS' SIGNATURES

I, Robert D. Herschman, 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 D. Herschman, Esq.  
Chairperson - Public Arbitrator

I, Joan M. Traub, 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.

  
Joan M. Traub, Esq.  
Panelist - Public Arbitrator

I, Dominick J. Dorata, 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.

Dominick J. Dorata, Esq.  
Panelist - Industry Arbitrator

Date of Decision: January 2, 1998

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Robert D. Herschman, Esq.  
Chairperson - Public Arbitrator

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Dominick J. Dorata, Esq.  
Panelist - Industry Arbitrator

Date of Decision: January 2, 1998