

NASD Regulation, Inc. Office of Dispute Resolution

6/98

In the Matter of the Arbitration Between

Name of Claimant

Ivan Valtchev

96-04273

Name of Respondent

National Discount Brokers

REPRESENTATION

Claimant Ivan Valtchev ("Claimant") was represented by Andrew P. Siff, Esq., Attorney at Law, New York, NY.

Respondent National Discount Brokers ("Respondent") was represented by Douglas P. Lobel, Esq., of the law firm of Kelley Drye & Warren, LLP, Washington, DC.

CASE INFORMATION

Statement of Claim filed: September 30, 1996.

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

Statement of Answer filed by Respondent on: November 19, 1996.

Respondent's Submission Agreement signed on: November 4, 1996.

HEARING INFORMATION

Pre-Hearing Date/Sessions: September 17, 1997 - one session with Chairperson only

Hearing Date/Sessions: March 25, 1998 - two sessions  
March 26, 1998 - two sessions  
April 8, 1998 - two sessions

Hearing Location: NASD Regulation, Inc., Office of Dispute Resolution, New York, NY

CASE SUMMARY

Claimant alleged that on May 31, 1996, he sought to place an order with Respondent to purchase shares in a particular stock. Claimant alleged that Respondent erroneously placed this order in another customer's account. Claimant alleged that, after the close of trading on May 31, 1996, Respondent advised Claimant that no purchase had been made. Claimant alleged that Respondent did not begin to investigate the matter until June 3, 1996. Claimant alleged that he was again advised on the morning of June 3, 1996, that no purchase had been made on May 31, 1996, and thus made another purchase with Respondent's consent. Claimant alleged that on June 4, 1996, Respondent located its error in placing the shares in another account and thereupon backcharged the purchase to Claimant. Claimant alleged that

instead of assuming responsibility for its error, Respondent attempted to place the entire financial burden upon Claimant. Claimant alleged that as the stock continued to lose value, Respondent refused to assume responsibility for its error and the losses began to mount.

Respondent denied each and every allegation contained in Claimant's Statement of Claim. Respondent specifically maintained that, although it committed an operational error in erroneously placing Claimant's securities temporarily in another customer's account, the error did not violate any rules nor cause any losses to the Claimant. Respondent maintained that Claimant was informed within one business day that the securities were located and placed back in his account. Respondent maintained that at the time the error was corrected, the value of the securities was at or very close to the purchase price, and therefore Respondent caused no losses to the Claimant. Respondent maintained that any losses thereafter sustained by Claimant were caused by his decision to hold the securities or enter unrealistic limit orders as the value of the stock declined. Respondent alleged that Claimant accepted and exercised control over the securities from the time they were placed in his account.

### **RELIEF REQUESTED**

In his Statement of Claim, Claimant requested compensatory damages of \$85,000 for the canceled transaction being placed in his account and for the unauthorized liquidation of holdings in the account. In addition, Claimant requested punitive damages of an additional \$85,000 for being subjected to discrimination based on national origin. In his Statement of Claim, Claimant claimed total damages of \$175,000. At the hearing, Claimant requested compensatory damages of \$38,947.80, with interest at 9% (\$5,358.10), for the loss on the sale of the securities at issue. Claimant also requested attorneys' fees of \$29,234.58 for his current attorneys and \$4,850 for his former attorneys. Claimant further requested reimbursement for his filing fee of \$1000.00 as well as the postponement fee of \$750.00. At the hearing, Claimant claimed total damages of \$80,163.48.

Respondent requested that Claimant's claim be dismissed in its entirety together with costs and attorneys' fees, including forum fees. Respondent requested reimbursement for attorneys' fees and expenses in the amount of \$39,137.44.

### **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 NASD Regulation, Inc.

### **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 Respondent National Discount Brokers shall pay Claimant Valtchev the sum of \$8600; no pre-judgment interest is awarded on this amount.
2. That the parties shall bear their own costs and attorneys' fees, except as Forum Fees are addressed herein.
3. That any and all relief not specifically addressed above is denied in its entirety.

**OTHER COSTS**

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent National Discount Brokers has paid to NASD Regulation, Inc., the \$350.00 member surcharge previously invoiced.

**FORUM FEES**

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

(1 pre-hearing session with Chairperson x \$300) + (6 hearing sessions x \$750) = \$4800 minus Claimant's hearing session deposit of \$750 = \$4050 balance due to NASD Regulation, Inc.

Forum fees are assessed equally against Claimant Valtchev and Respondent National Discount Brokers. Claimant Valtchev and Respondent National Discount Brokers are each assessed Forum Fees of \$2400.00. Claimant Valtchev is entitled to offset this amount with his hearing session deposit of \$750. Thus, Claimant Valtchev shall pay to NASD Regulation, Inc., the balance of \$1650.00 and Respondent National Discount Brokers shall pay to NASD Regulation, Inc., the balance of \$2400.00.

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


9806184

DATE SIGNED

Concurring Arbitrators' Signatures

I, David S. Billet, Esq., do hereby affirm,  
pursuant to article 7507 of the Civil Practice  
Law & Rules, that I am the individual described  
herein and who executed this instrument which  
is my Award.

6/9/98

  
David S. Billet, Esq., Chairperson  
Public Arbitrator

I, John A. DeStefano, do hereby affirm,  
pursuant to article 7507 of the Civil Practice  
Law & Rules, that I am the individual described  
herein and who executed this instrument which  
is my Award.

\_\_\_\_\_

John A. DeStefano, Panelist  
Public Arbitrator

I, Frank Irizarry, Esq., do hereby affirm,  
pursuant to article 7507 of the Civil Practice  
Law & Rules, that I am the individual described  
herein and who executed this instrument which  
is my Award.

\_\_\_\_\_

Frank Irizarry, Esq., Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation:

June 16, 1998

9806184

DATE SIGNED

Concurring Arbitrators' Signatures

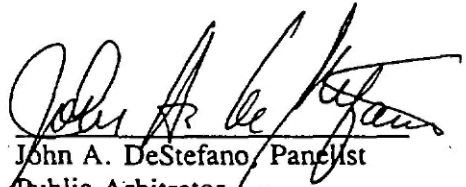
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David S. Billet, Esq., Chairperson  
Public Arbitrator

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6/5/98

  
John A. DeStefano, Panelist  
Public Arbitrator

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Public Arbitrator

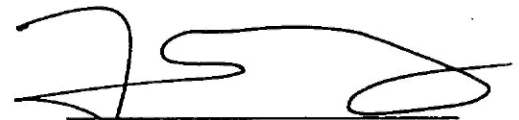
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Frank Irizarry, Esq., Panelist  
Industry Arbitrator

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