

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harlan P. Wallingford

96-04351

Name of Respondents

Investors Associates, Inc
John J. Nalick
Edward Powers

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on September 30, 1996, claimant Harlan Wallingford ("Wallingford"), who appeared Pro Se, alleged that respondents Investors Associates, Inc. ("IAI"), John Nalick ("Nalick") and Edward Powers ("Powers") sold stock in his account without his authorization. Claimant further alleged that in May he was contacted by Anthony Barrizzi ("Barrizzi") to interest him in buying some promising stock ComCast. Claimant also alleged that he gave an instruction to buy 100 shares of ComCast. Claimant asserted that he had to wait until the actual invoice arrived to send a check along with a invoice copy, but the invoice was sent to the wrong address. Claimant further asserted that he mailed the check the next morning and called Barrizzi's office to get the address corrected. Claimant also asserted that the check apparently arrived in time to comply with the new regulations, because in early June his account report reflected the purchase. Claimant contended that the report also had been addressed incorrectly and he called again to report the error and was again assured that he correction was made.

Claimant further contended that on June 20, Nalick called to interest him in buying shares in Bev-Tyme and he authorized the purchase of 200 shares. Claimant also contended that he waited for the invoice to arrive, but the invoice was incorrectly addressed again, so he mailed a check dated June 26. Claimant alleged that on July 1, he received a phone call stating that his check had not been received and because of the new regulations the transaction would be canceled if not received that day. Claimant further alleged that he told Nalick that he would not send another check and considered the transaction dead and that the purchase order canceled if the check was not already in hand. Claimant also alleged that he did not learn until July 11 that, contrary to his instructions, on July 2, Nalick reinstated and executed the purchase, to make a commission.

Claimant asserted that on July 8, he received a notice, again forwarded to an incorrect address, that in fact the transaction to buy Bev-Tyme was officially unmet and his late arriving check was now in the Prudential Money Market as of July 1. Claimant further asserted that he called Nalick to correct the address again, and to tell him to send a check for everything that was in the money market, but his call was taken by Powers. Claimant also asserted that in explaining to Powers the situation, Powers flew into a violent rage and called his attitude petty.

Claimant alleged that on July 11, he received two notices, one of which was correctly addressed. Claimant further alleged that the correctly addressed notice stated that Powers had sold his ComCast stock on July 8, subtracted fees from the sales price and presumably added the remainder to the money market account. Claimant also alleged that the other notice stated Nalick had reinstated and executed the Bev-Tyme purchase, both of these transactions without his authorization. Claimant asserted that in response to his inquiry about the unauthorized trades, Powers stated that he decided to close out his account. Claimant further asserted that \$499.00, was withheld for income taxes from the sale of ComCast because they did not have a signed W-9 form in hand. Claimant contended that he is certain he signed and returned this form or some other certification of his Social Security Number under the penalties of perjury when he opened his account.

Respondents IAI, Powers and Nalick (collectively referred to as "respondents") through their representative and counsel M. David Sayid, Esq., of the law firm Sayid and Associates located in Hackensack, New Jersey maintained that when claimant opened his account he stated that he was knowledgeable in the securities industry. Respondents further maintained that claimant's statements that he would not forward a check and that he considered the trade already dead are total fabrications. Respondents also maintained that claimant instead told Nalick that another check would be forthcoming and, if and when he received said check, IAI should place the check into his money market account. Respondents contended that merely because claimant had believed that the transaction was dead, did not cancel the transaction. Respondents further contended that claimant stated that stated he would be forwarding the required funds. Respondents also contended that the reason for the sale was due to the debit incurred by claimant's blatant failure to forward required funds for an authorized trade. Respondents maintained that the Bev-Tyme securities was authorized by claimant and that he requested that these securities be forwarded to him at his express request. Additionally, respondents further maintained that claimant had not forwarded the proper W-9 paperwork back to respondent IAI.

RELIEF REQUESTED

Claimant Harlan Wallingford requested: (1) \$195.83 for the unauthorized sale of ComCast; (2) \$1,566.754 for losses suffered to the unauthorized purchase of Bev-Tyme; (3) \$22.89 at 5% for the lost interest on \$499.33 which had to be sent to the IRS; and (4) \$3.33 the amount remaining in his money market account.

Respondents IAI, Powers and Nalick requested that the claims of claimant be dismissed in their entirety, plus costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$5,000.00.

AWARD

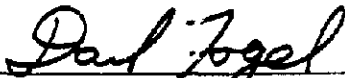
Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, David Fogel, Esq., was selected to review in controversy between the parties set forth in submissions to Arbitration signed by claimant Harlan Wallingford on September 26, 1996. Respondents IAI, Powers and Nalick did not execute Submission Agreements as required by Rules 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. Respondent Investor Associates, Inc. be and hereby is liable and shall pay claimant the sum of \$225.00.
2. The claims of claimant Harlan Wallingford against respondents John Nalick and Edward Powers are dismissed in their entirety.
3. All other relief requests are denied.
4. The \$125.00 filing fee previously deposited by claimant shall be retained by NASD Regulation, Inc. Respondent Investors Associates, Inc. be and hereby is liable and shall pay claimant the sum of \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, **David Fogel, 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.



David Fogel, Esq.

Date of Decision: April 11, 1997