

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alan G. Feldman

96-04623

Name of Respondents

J.W. Barclay & Co., Inc.
Thomas Zukowski

REPRESENTATION

Claimant Alan G. Feldman ("Feldman") appeared pro se.

For Respondent J.W. Barclay & Co., Inc. ("Barclay") appeared Theo Basis, Compliance Officer at Respondent J.W. Barclay & Co., Inc.

Respondent Thomas Zukowski ("Zukowski") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on October 11, 1996.

Claimant's Submission Agreement was signed on October 11, 1996.

A Statement of Answer was filed by Respondent Thomas Zukowski on November 7, 1996.
Respondent Thomas Zukowski's Submission Agreement was signed on November 8, 1996.

A Statement of Answer was filed by Respondent J.W. Barclay & Co., Inc. on November 18, 1996.
Respondent J.W. Barclay & Co., Inc.'s Submission Agreement was signed on November 15, 1996.

HEARING INFORMATION

Hearing Date/Session: March 4, 1997 2 Sessions

The hearing was held at the offices of NASD Regulation, Inc. located at 125 Broad Street, New York City, New York.

CASE SUMMARY

Claimant, Allan Feldman, alleged that his broker, Thomas Zukowski, executed three (3) unauthorized transactions in his account. Namely, (i) sale of 1,000 Retix (RETX) at \$7.90; (ii) 6/20/96 purchase of 300 Kay Kotts (KTAX) at \$6.42; and, (iii) 6/27/96 purchase of 500 Digital Data Network (DIDA) at \$7.47. Claimant originally sought to have the three (3) alleged unauthorized trades canceled, but later decided that he did not want the RETX sale canceled. The reason being, he would assume further losses for RETX because after cancellation of the alleged unauthorized RETX sale at 7.90, claimant would

only be able to receive about \$6 for his shares if he then chose to sell. J.W. Barclay canceled all three trades. As a result of the RETX cancellation, claimant is seeking \$2,000 for the losses he sustained. The claimant is making no claims as to the result of KTAX and DIDA cancellations.

Respondent Barclay maintained the claimant's allegations are not bona fide. The claimant allegedly fabricated his contentions in order to avert losses for trades which were in fact authorized by claimant. The claimant had requested respondent Barclay to cancel trades he in fact authorized. In his initial verbal telephone complaint, Claimant alleged to Barclay's Compliance Director that all three trades were unauthorized. Barclay was unable to ascertain the veracity of these allegations with Respondent Zukowski, because he was no longer employed by respondent. Therefore, a business decision was made to cancel all the alleged unauthorized trades as per claimant's instructions. Claimant then later selectively asked to be allowed to keep the sale of RETX at \$7.90. In essence, he revoked his prior instructions to cancel all the trades. Claimant realized that the price of RETX had now fallen to \$6; he looked to avoid sustaining a loss of \$1.90 per share (approximately \$2,000). Mr. Feldman's motives for complaining were not because of unauthorized trades, but, instead, to extricate himself from losing transactions. At one point claimant audaciously said to the Compliance Director, "It's no big deal for your company to write off this little \$2,000 loss... just cancel the two trades and leave the RETX alone and you'll never hear from me again."

RELIEF REQUESTED

Claimant requested \$2,000.00 in actual damages.

Respondent requested that the claim of claimant be dismissed based on the grounds that claimant has no cause of action; in view of the fact that respondent acted in accordance with claimant's specific instructions to cancel trades.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondent Barclay requested an adjournment of the hearing to amend and/or file a cross claim seeking relief for the KTAX and DIDA trades. The claimant withdrew, with prejudice, his complaint as to the alleged unauthorized trades of 300 shares of KTAX and 500 shares of DIDA.

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 remain on file with the NASD.

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. All claims asserted by Claimant Feldman against Respondents J. W. Barclay & Co., Inc. and Thomas Zukowski are hereby dismissed in their entirety.
2. Any and all other claims asserted herein are hereby denied in their entirety.
3. Each party shall bear their respective costs, including attorneys' fees.

ARBITRATOR'S SIGNATURE

I, Karim F. Hill-Harvey, 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.



Karim F. Hill-Harvey, Esq.

Date of Decision: April 28, 1997