

AWARD**NASD REGULATION, INC.**

In the matter of the Arbitration Between

Name of Claimant

Jack Lehtinen

Arbitration
NO. 96-04662

Name of Respondents

Greenway Capital Corporation
National Financial Services Corporation

Name of Cross-Claimant and Third-Party Claimants

National Financial Services Corporation
Greenway Capital Corporation

Name of Third-Party Respondent

Michael G. Wheelock

REPRESENTATION

For Claimant: Jack Lehtinen, Las Vegas, Nevada

For Respondent Greenway Capital Corporation: Alan Mandel, Cortlandt
Capital Corporation, New York, New York

For Respondent National Financial Services Corporation: Michael G.
Shannon, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, New
York, New York

CASE INFORMATION

Statement of Claim filed on or about: December 10, 1996

Claimant's Submission Agreement signed: September 25, 1996

Answer, Cross-Claim and Third-party Claim filed by Respondent
National Financial Services Corporation: February 18, 1997

Statement of Answer and Third-party Claim filed by Respondent
Greenway Capital Corporation: May 5, 1997

Respondent National Financial Services Corporation's Submission Agreement signed: January 31, 1997

Respondent Greenway Capital Corporation did not file a Submission Agreement. However, it is subject to NASD Regulation, Inc. (NASD) jurisdiction in accordance with Rule 10301 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):
April 17, 1998 (one session)

Hearing Date(s)/Session(s): July 14, 1998 (two sessions)

Hearing Location: Las Vegas, Nevada

CASE SUMMARY

Claimant Jack Lehtinen alleged that on October 4, 1993, he sold 7385 shares of IDC Holdings Ltd. (IDCH) stock for \$18,454.25 and 4645 shares of Syntech Intl. (SYTI) stock for \$11,604.25 and was to be paid \$30,058.50 by October 11, 1995. Claimant further alleged that he has never been paid and alleged that Respondents owe him \$30,058.50 plus interest from October 11, 1995.

Respondent National Financial Services Corporation (NFSC) asserted that Claimant's claim against NFSC should be dismissed. NFSC alleged that while Claimant asserts that he never received the \$30,058.50 proceeds from his purported sale of certain stock (IDCH and SYTI) in October 1993, the fact is that the stock was not his to sell and further alleged that notably, the Statement of Claim does not allege that Lehtinen had purchased the subject stock, nor does the pleading allege anything about how the shares came to be in Lehtinen's account before his alleged sale. NFSC further alleged that while Claimant's account does reflect sales of the 4,645 SYTI and 7,385 IDCH share positions, both of the sales were of positions which had been erroneously transferred from Wheelock's account and further alleged that Claimant was not damaged by not receiving the proceeds of the sales. NFSC further alleged that the proceeds were properly transferred back into Wheelock's account.

NFSC asserted a cross-claim against Respondent Greenway Capital Corporation (Greenway) and alleged that if Lehtinen's allegations concerning certain communications with Greenway are true or, if the facts should show that any Greenway employees engaged in misconduct relating to Lehtinen's account or which damaged Lehtinen and for which NFSC may be held responsible, then under Greenway's Clearing Agreement with NFSC, Greenway must

indemnify NFSC for all such losses, costs, expenses and liabilities, including NFSC's reasonable legal fees.

NFSC asserted a third-party claim against Michael S. Wheelock and alleged that Lehtinen is claiming that he should have received \$30,058.50 as proceeds of the sale of securities and, in fact, the reason he was not paid is that the proceeds were credited to Wheelock's account. NFSC further alleged that if Lehtinen should establish that he was entitled to the proceeds, then Wheelock will have been unjustly enriched by having received them and Wheelock should pay the proceeds to Lehtinen. NFSC further alleged that alternatively, if NFSC should have any liability to Lehtinen with respect to the proceeds, then Wheelock, as the actual recipient of the proceeds, should indemnify NFSC.

Respondent Greenway denied Claimant's allegations of wrongdoing and alleged that Claimant is attempting to recover the proceeds of the sale of securities that were not his to sell. Greenway further alleged that during the period in question, Respondent NFSC was the clearing firm to Greenway. Greenway further alleged that pursuant to the letter dated September 2, 1994, on October 19, 1993, Mr. Wheelock's account was frozen due to ACAT delivery instructions and alleged that on or about October 25, 1993, the shares in question were erroneously transferred to Claimant's account from the account of Michael Wheelock. Greenway further alleged that the securities were sold on October 11, 1993, and thus unavailable to be transferred back to Mr. Wheelock's account. Greenway further alleged that in lieu of the securities, on November 3, 1993, the sale proceeds were journaled to Mr. Wheelock's account and further alleged that incidentally, the Claimant and Mr. Wheelock share the same post office box address. Greenway further alleged that Claimant suffered no damages as a result of the sale proceeds being journaled to the account of Mr. Wheelock, rather, the proceeds were properly distributed to their rightful owner. Greenway also asserted affirmative defenses. Greenway also joined in the third-party claim against Michael Wheelock filed by NFSC.

RELIEF REQUESTED

Claimant requested \$30,058.50 plus interest and punitive damages of \$30,000.00 against Greenway; and requested \$30,000.00 plus \$30,000.00 in punitive damages against NFSC.

NFSC requested that the panel dismiss the Statement of Claim as against NFSC and award NFSC its costs and counsel fees. NFSC also asserted that should the panel determine that Claimant is entitled to any relief, then NFSC requests that the panel assess all such relief solely against the third-party respondent, Wheelock. Alternatively, NFSC requested that the panel hold

Greenway and/or Wheelock liable to NFSC to indemnify NFSC against any and all liabilities NFSC may be held to have to Claimant. NFSC also requested that it be awarded its costs, hearing expenses and reasonable counsel fees.

Greenway requested that the complaint and cross-claim be dismissed in their entirety as against Respondent Greenway, and should a determination be made that Claimant is entitled to any relief, that all such relief be assessed against third-party respondent Wheelock. In the alternative, Greenway requested that NFSC and/or third-party respondent Wheelock should be held liable to indemnify Greenway.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Greenway did not appear at hearing. The panel determined that Greenway received proper notice of the hearing and ruled to proceed in Greenway's absence.

The parties present at hearing agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties present at hearing agreed to receive conformed copies of the Award while the originals 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. Respondent Greenway is solely liable for and shall pay to Claimant Jack Lehtinen the sum of \$38,058.50 plus interest at the rate of 10% per annum from October 26, 1993 until paid.
2. Respondent Greenway is solely liable for and shall pay to Claimant Jack Lehtinen the sum of \$200.00 as reimbursement of Claimant's filing fee. Additionally, Greenway is solely liable for and shall pay to Claimant Jack Lehtinen the sum of \$1,125.00 as reimbursement of Claimant's forum fee assessment.
3. The panel finds in favor of Respondent NFSC with respect to Claimant's Statement of Claim. Accordingly, all claims by Claimant against Respondent NFSC are dismissed.
4. Claimant's claims for punitive damages are denied.
5. The panel finds in favor of Respondent NFSC on its Cross-Claim for indemnification against Greenway. Since the panel has found in favor of Respondent NFSC, no award has been issued against

it on the main claim filed by Claimant. Therefore, Greenway is solely liable for and shall indemnify NFSC for the costs incurred in defending this matter in the amount of \$2,200.00 for costs and \$2,500.00 for attorney's fees.

6. Greenway is solely liable for and shall pay to NFSC the sum of \$500.00 as reimbursement of NFSC's filing fee. Additionally, Greenway is solely liable for and shall pay to NFSC the sum of \$1,125.00 as reimbursement of NFSC's forum fee assessment.

7. NFSC's and Greenway's third-party claims against Michael G. Wheelock are dismissed, without prejudice, solely due to the inability of NFSC and Greenway to obtain service and jurisdiction over Mr. Wheelock.

8. Claimant Jack Lehtinen and NFSC shall pay their own costs and fees as between them.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by Claimant and shall retain the \$250.00 hearing session deposit previously deposited by NFSC. Forum fees shall be split between Claimant and NFSC and are calculated as follows:

| | | |
|--|---|------------|
| One pre-hearing session @ \$750.00/session | = | \$ 750.00 |
| Two hearing sessions @ \$750.00/session | = | \$1,500.00 |
| Total fees assessed | = | \$2,250.00 |
| Claimant's share (50%) | = | \$1,125.00 |
| Credit for hearing deposit | = | \$ 750.00 |
| Balance due | = | \$ 375.00 |
| NFSC's share (50%) | = | \$1,125.00 |
| Credit for hearing deposit | = | \$ 250.00 |
| Balance due | = | \$ 875.00 |

Fees are payable to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Greenway shall pay to NASD the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent NFSC has paid to NASD the \$350.00 member surcharge previously invoiced.

ARBITRATORS

| Name | Public / Industry |
|-----------------------|---------------------|
| M Nelson Segel, Esq. | Public Arbitrator |
| James H. Mayer, Esq. | Public Arbitrator |
| Madelyn A. Levy, Esq. | Industry Arbitrator |

Concurring Arbitrators' Signatures



 M Nelson Segel, Esq.

 James H. Mayer, Esq.

 Madelyn A. Levy, Esq.

Date of Decision: _____

Date Served:

SEP 0 11998

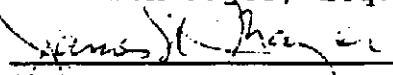
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