

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Joseph Fierro

vs.

96-04690

Name of Respondents

T.L. Group, Inc.
Penson Financial Services, Inc.
Jeffrey Ihm

REPRESENTATION

Claimant Joseph Fierro ("claimant") appeared Pro Se.

Respondents T.L. Group, Inc. ("TLG") and Jeffrey Ihm ("Ihm") did not appear at the evidentiary hearing conducted in this matter.

Respondent Penson Financial Services, Inc. ("Penson") was dismissed upon motion prior to the hearing on the merits.

CASE INFORMATION

Statement of Claim filed: October 21, 1996.

Claimant's Submission Agreement signed on: October 15, 1996.

Statement of Answer filed by respondent TLG on: December 5, 1996.

Respondent TLG's Submission Agreement signed on: December 5, 1996.

Statement of Answer filed by respondent Penson on: December 6, 1996.

Respondent Penson's Submission Agreement signed on: December 6, 1996.

Respondent Ihm did not file a Statement of Answer nor a properly executed Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: April 16, 1997 - Two Sessions

The hearings were conducted at the offices of the National Association of Securities Dealers Regulation, Inc. located at 125 Broad Street in New York City, New York.

CASE SUMMARY

Claimant alleged that he was introduced to Ihm, a financial consultant with TLG/L.I. Investment, through a friend for the purpose of obtaining investment advice and executing stock trades less expensively. Claimant further alleged that from the outset he had problems communicating with Ihm such as phone problems and not getting his calls returned and Ihm not having his correct address. Claimant also alleged that in April of 1996 he contacted Ihm and had him sell all his positions, in all three of his accounts, to purchase shares of XECOM. Claimant contended that he had extreme difficulty correcting his address and that his instructions to sell his positions to purchase shares of XECOM were not followed. Claimant further contended that instead of following his instructions, 200 shares of RWNK were bought and sold without authorization. Claimant also contended that on May 31, 1000 shares of XECOM were purchased for his IRA but at a price considerably higher than the price when he originally requested the purchase. Claimant asserted that only a small portion of the \$14,000.00 he had to invest was used toward this purchase.

Claimant alleged that by the end of June he was still experiencing communication problems regarding stock purchases and account holdings. Claimant further alleged that after much effort, he was able to get Allison on the phone and she sold some the shares of a mutual fund he held. Claimant also alleged that the sale was incorrectly executed and that he had to make several more calls over a period of two months to get the remainder of the shares sold. Claimant contended that he directed Ihm to purchase shares of XECOM with the proceeds but that only \$10M of the over \$13M netted from mutual fund sale was used to buy XECOM shares. Claimant further contended that he contacted the TLG office in Dallas to complain about the missing shares and that they were unhelpful directing him back to Ihm. Claimant also contended that because of this problem, he had to make many phone calls which led to his dismissal from his job. Claimant asserted that he became frustrated and that Ihm told him several lies to alleviate his concerns but would not give him copies of his account statements so that he could see what was occurring in the accounts. Claimant further asserted that Ihm informed him that the mess in his accounts was due to TLG and that he should not be concerned because he would straighten out the problems. Claimant also asserted that he continually got trade confirmations for transactions which were listed as errors.

Claimant alleged that he continued having communication problems with Ihm and TLG and that during one of his unannounced visits to TLG offices, Ihm had him sign account transfer documents to J&S Securities. Claimant further alleged that Ihm told him that J&S Securities would be sending him new, corrected account statements which never came. Claimant also

alleged that he was able to contact David Bellia at TLG and expressed his concerns but that Bellia did not assist him rather directed him to contact the NASD. Claimant contended that as a result of the above, he has suffered losses for which the respondents should be held liable.

Respondent Penson maintained that it is a division of Service Asset Management Company which provides securities transaction processing services to its customers. Respondent further maintained that claimant's allegations concern dissatisfaction with the handling of the brokerage account. Respondent also maintained that it has no affiliation with Ihm nor does it have any involvement with decisions relating to the handling of the account. Respondent contended that it should be dismissed from this case because no claim has been asserted against it.

Respondent TLG maintained that L.I. Investment is the company which pays all the bills and expenses related to the operation of the office through which Ihm operated. Respondent TLG further maintained that on May 13, 1996, Ihm resigned and his accounts were assigned to Bellia and that it became aware the problems only after Bellia resigned on August 19, 1996.

Respondent contended that claimant asked to purchase "short term growth with high risk" securities and those types of securities were purchased. Respondent further contended that it is the registered broker dealer and has no relationship with L.I. Investments but has independent contractual registered representatives in the State of New York. Respondent also contended that Allison could not accept orders from customers. Respondent asserted that it accepts order from registered representatives and has no basis to believe that the Fierro orders were not properly handled.

Respondent TLG maintained that all original confirmations are mailed the day of the transaction directly to the account of record by Penson. Respondent further maintained that all original monthly statements are mailed quarterly and months were there is activity. Respondent also maintained that Ihm did not place any trades after his date of departure.

Respondent Ihm did not file a Statement of Answer.

RELIEF REQUESTED

Claimant requested \$18,817.00 in damages.

Respondent Penson requested that the case against it be dismissed in its entirety.

Respondent TLG requested that the claims against it be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator made the following rulings concerning respondent Jeffrey Ihm who did not file a Statement of Answer nor a Submission Agreement, and respondents Jeffrey Ihm and T.L. Group, Inc. who failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent TLG was a member of the NASD at the time this controversy arose. The panel also found that respondent Ihm was a registered representative of a NASD member firm at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Ihm and TLG pursuant to Rule 10301 the Code.
3. In view of (2) above, the panel found respondent Ihm was required to file with NASD Regulation a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided respondents TLG and Ihm with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without respondents Ihm and TLG, whose absences were unexcused.

Before the hearing, the arbitrator considered and reviewed all documents filed by the parties concerning respondent Penson's Motion to Dismiss. The Motion was granted.

The arbitrator considered and reviewed all documents filed by the parties relating to respondent T.L. Group's request to attend the hearing via telephone. The request was denied.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Jeffrey Ihm and T.L. Group are jointly and severally liable and shall pay to claimant Joseph Fierro \$18,817.00 in damages.
2. Respondents Jeffrey Ihm and T.L. Group are jointly and severally liable and shall pay to claimant Joseph Fierro simple interest at the legal rate from October 21, 1996 to the date of payment of the award.
3. The parties shall bear their respective attorney's fees and costs.
4. All other relief requests are denied.

FORUM FEES

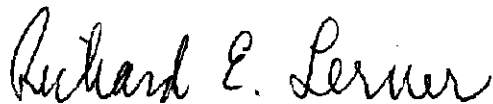
Pursuant to Rule 10332c of the Code of Arbitration Procedure, the arbitrator has assessed the following forum fees:

non-refundable filing fee	= \$100.00
two sessions x \$300.00	= \$600.00

Respondents Jeffrey Ihm and T.L. Group be and hereby are jointly and severally liable for the sum of \$700.00 representing the total amount of forum and filing fees assessed. Therefore, respondents Jeffrey Ihm and T.L. Group shall pay to NASD Regulation \$700.00 in satisfaction of outstanding forum fees.

ARBITRATOR'S SIGNATURE

I, Richard Lerner, 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.



Richard Lerner, Esq.
Public Chairperson

Date of Decision: May 16, 1997