

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Cruttenden Roth, Inc.

96-04821

Name of Respondent

Felicia Choi

REPRESENTATION

For Claimant Cruttenden Roth, Inc. ("Cruttenden") appeared Paul I. Hamada, of the law offices of Keesal, Young & Logan, located in Long Beach, California.

For Respondent Felicia Choi ("Choi") appeared Thomas D. Mauriello, Esq., a sole practitioner with offices in San Diego, California.

CASE INFORMATION

Cruttenden's Statement of Claim was filed on November 25, 1996.
Cruttenden's Response to the Counterclaim was filed on February 3, 1997.
Cruttenden's Submission Agreement was signed on October 24, 1996.

Choi's Statement of Answer and Counterclaim was filed on January 21, 1997.
Choi's Submission Agreement was signed on January 20, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	June 27, 1997	One Session
	July 28, 1997	One Session
Hearing Dates/Sessions:	July 30, 1997	Two Sessions
	March 20, 1998	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Cruttenden alleged that Choi was a sophisticated "day trader" who opened two accounts with it for the purpose of purchasing securities. Cruttenden further alleged that it entered into oral and written contracts with Choi under which it agreed to execute her instructions regarding the purchase and sale of securities in accordance with the rules, regulations, customs and usages of the exchange or market and in accordance with all federal and state laws and regulations. In addition, Cruttenden alleged that Choi agreed to remain liable for any deficiency. Cruttenden asserted that, on June 18, 1996, Choi placed an order with Will Peter, her broker at Cruttenden, for 5,000 shares of Orthologic Corp. ("Orthologic"), but before the settlement date of the trade the price of Orthologic dropped and Choi reneged on the trade. Cruttenden maintained that as a result of this a debit balance was incurred in Choi's account. Cruttenden asserted that to date Choi has refused and failed to pay the debit balance in her account, despite repeated requests.

Choi denied that she entered into a written contract under which she agreed to remain liable for any deficiency. Choi maintained that, although she spoke to Peter several times that day, she did not order 5,000 shares of Orthologic, and, therefore, is not liable for any debit balance in her account.

In her Counterclaim, Choi asserted that Will Peter ("Peter"), an employee of Cruttenden, called her on June 18, 1996, requesting that she purchase 5,000 shares of Orthologic. Choi further asserted that during this conversation she declined to purchase the shares. Choi alleged that despite her refusal to purchase the shares, Peter placed an order for the purchase of 5,000 shares on her behalf. Choi maintained that the difference between the purchase price and the sale price incurred a loss which was attributed to her account. Choi maintained that she did not authorize, approve, ratify or accept these transactions which were entered on her behalf, and has closed her account with Cruttenden. Choi asserted that the actions of Cruttenden and Peter constitute securities fraud, violations of SEC Rule 10(b)-5, common law fraud, and negligent misrepresentation.

Cruttenden maintained that Choi is a professional investor who speculates by using short-term trading. Cruttenden further maintained that Choi entered and authorized an order for 5,000 shares of Orthologic and later refused to pay for the purchase after a significant drop in the price per share.

RELIEF REQUESTED

Cruttenden requested:

- (a) Damages in the amount of \$32,250.00, plus interest from June 21, 1996 as provided by law;
- (b) Attorneys' fees;
- (c) For costs of suit herein; and
- (d) For such other and further relief as the arbitrators deem just and proper.

Choi requested in her Answer and Counterclaim:

- (a) That Cruttenden's claim be dismissed in its entirety;
- (b) General and special damages according to proof;
- (c) Costs of arbitration, including attorneys' fees, according to proof; and
- (d) Such other and further relief as the panel deems just and proper.

Cruttenden requested that the Counterclaim be dismissed and that it receive its attorneys' fees and costs related to this claim, and that Choi be further sanctioned for bring a frivolous Counterclaim.

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 original remains 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. Choi is liable for and shall pay to Cruttenden the sum of \$11,900.00, plus interest at 9% per annum, accruing from June 18, 1996 until the date the award is satisfied.
- 2. All requests for attorneys' fees and costs are hereby denied.
- 3. Choi's Counterclaim is hereby denied in its entirety.
- 4. All other relief requests are hereby denied.

FORUM FEES

Pursuant to Rule 10205(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee and \$200.00 member surcharge deposited by Cruttenden and the \$250.00 non-refundable filing fee deposited by Choi, and have assessed the following Forum Fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
4 Hearing sessions x \$600.00	=	<u>\$2,400.00</u>
Total Forum Fees	=	\$3,000.00

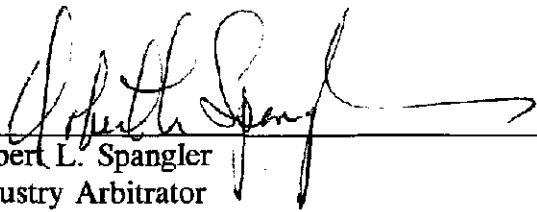
- 1. Cruttenden is liable for and shall pay the sum of \$1,500.00, representing one-half

of the total forum fees assessed. Cruttenden previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, shall remit the balance of \$900.00.

2. Choi is liable for and shall pay the sum of \$1,500.00, representing one-half of the total forum fees assessed. Choi previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, shall remit the balance of \$900.00.

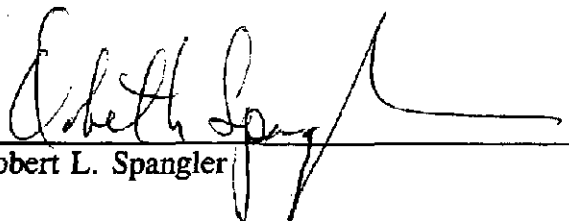
Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES


Robert L. Spangler
Industry Arbitrator

Date of decision: May 12, 1998

I, **Robert L. Spangler**, 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.


Robert L. Spangler

ARBITRATORS' SIGNATURES

Marion Yuen
Marion Yuen, MA
Public Arbitrator

Date of decision: May 12, 1998

I, **Marion Yuen, MA**, 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.

Marion Yuen
Marion Yuen, MA

ARBITRATORS' SIGNATURES

William A. Mechmann

William A. Mechmann, Esq.
Chairperson - Public Arbitrator

Date of decision: May 12, 1998

I, **William A. Mechmann, 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.

William A. Mechmann

William A. Mechmann, Esq.