

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Lawrence P. Stern

96-04841

Name of Respondents

Spencer-Winston Securities Corporation  
Jason Weisz

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**REPRESENTATION**

Claimant Lawrence P. Stern ("claimant") appeared pro se.

Respondent Jason Weisz ("Weisz") appeared pro se.

For Respondent Spencer-Winston Securities Corporation ("SWS") appeared Oscar Echman, a partner of SWS which is located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on: October 29, 1996.

Claimant's Submission Agreement was signed on: October 29, 1996.

Joint Statement of Answer was filed by respondents Weisz and SWS (collectively referred to as "respondents") on: December 13, 1996.

Respondent Weisz's Submission Agreement was signed on: November 27, 1996.

Respondent SWS' Submission Agreement was signed on: November 26, 1996.

**HEARING INFORMATION**

Hearing Date/Session: April 2, 1997 - 1 session

The hearing was conducted at the offices of NASD Regulation, Inc., located at 125 Broad Street, 36th Floor, New York, New York.

### CASE SUMMARY

Claimant alleged that, on July 25, 1996, he purchased 2000 shares of Diana Corp. ("DNA") through SWS. Claimant contended that although he asked Josh Milder ("Milder") to place a sell order for 1000 shares of DNA at \$35.00 for August 29, and 30, 1996, these orders were not executed. Claimant also contended that, on September 4, 1996, he spoke with Weisz and informed him that he wanted to put his order back in at \$35.00 on a good-till-canceled basis. Claimant alleged that when he received the confirmation of the sale on September 6, 1996 it reflected the sale of 2000 shares instead of 1000 shares. Claimant maintained that, upon discovering the error, he contacted Milder, informed him of the error and instructed him to return the 1000 shares to his account at \$35.00 per share; claimant alleged that the stock price at that time was approximately \$36.00 per share. Claimant also alleged that although Milder acknowledged that the sell order was for 1000 shares, Milder stated that before he could do anything he needed to speak with Weisz. Further, claimant contended that when he spoke with Weisz on September 9, 1996 and Weisz refused to return the 1000 shares to his account at \$35.00 per share, claimant instructed him to purchase 1000 shares of DNA at the market price of \$44.00 per share.

Respondents maintained that, on September 5, 1996, claimant placed with Weisz an open order to sell 2000 shares of DNA at \$35.00 per share, that this order was executed and that claimant received a confirmation. Respondents contended that claimant subsequently contacted Milder and informed him that his order was only for 1000 shares, instead of 2000 shares as it was executed. In addition, respondents alleged that Milder informed claimant that, if claimant wanted to own the 1000 shares of DNA, he should purchase them at the market price of \$36.00 per share in order to avoid a larger price difference if the quote changed upward. Respondents maintained that, in spite of this advice, claimant refused to enter the buy order. Further, respondents contended that, when claimant urged Milder to simply return the stock to his account, he was informed that it would not be possible to return the stock to his account because the stock was already sold. Respondents also alleged that claimant met with Weisz on the next trading day, demanded that the 1000 shares be reinstated in his account at \$35.00 per share, and then issued an order to buy the 1000 shares at the market price of \$44.00 per share. Respondents maintained that most of the price difference which claimant claimed as a loss was the result of: 1) claimant's refusal to buy the stock back at the market price of \$36.00 per share and 2) his choice to buy the stock back at \$44.00 per share instead of waiting for a better price opportunity in which to execute the purchase.

### RELIEF REQUESTED

Claimant requested \$9,000.00 in actual damages plus commissions.

Respondents requested that all claims be dismissed in their entirety.

### 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 deter-

mination as follows:

1. Respondents be and hereby are jointly and severally liable and shall pay claimant the sum of **ONE THOUSAND DOLLARS (\$1,000.00)**.
2. Respondent SWS be and hereby is liable and shall pay claimant the sum of \$75.00 to reimburse claimant for the hearing session deposit previously paid to NASD Regulation Inc.
3. All other requests are hereby denied.

## **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation, Inc., shall retain the \$75.00 non-refundable filing fee and has assessed the following forum fees:

1 hearing session = \$75.00

Respondent SWS be and hereby is liable for the sum of \$75.00, representing the total amount of forum fees assessed.

**ARBITRATOR'S SIGNATURE**

**James Dolan, Esq.**  
**Chairperson--Public Arbitrator**

Date of Decision: June 2, 1997

I, **James Dolan, 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.

James Dolan, Esq.