

N.A.S.D. REGULATION AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

CASE: 96-05108

David Patrick Shaw, claimant v. Presidential Brokerage, Inc., Daniel G. Lempe and Anthony J. Campen, respondents.

ATTORNEYS:

For Claimant

Claimant appeared pro se - Los Angeles, CA

For Respondents appeared Gregg A. Johnson, Esq. - San Diego, CA.

DATE FILED: 11/15/96.

CASE SUMMARY: Claimant alleged misrepresentation and failure to supervise a bridge loan investment in Contact International Corp.

Claim Data

Claim: \$5,000.00 plus \$750 in interest.
Punitive: \$.00
Atty Fees: \$.00
Filing Fees: \$.00
Other: \$.00

Award Data

Award: \$.00
Punitive: \$.00
Atty Fees: \$.00
Filing Fees: \$125.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All requests for attorney fees are denied. 3) All other requests for relief are denied. 4) The \$125.00 filing fee previously deposited by the claimant with the National Association of Securities Dealers Regulation, Inc. shall be retained by NASD Regulation, Inc. Respondent Presidential Brokerage, Inc. shall pay claimant \$125.00 as reimbursement of the filing fee.

ARBITRATOR'S REPORT:

Claimant Shaw has the burden of proof with respect to his allegations.

There is no proof that either Lempe or Campen acted in any manner with respect to the relevant transaction or the acts of Walsh. Therefore, the claims against Lempe and/or Campen are dismissed.

The major issue here is whether Presidential acted with want of ordinary care, and, thus, caused Shaw to reasonably believe that Walsh acted as Presidential agent in a transaction that appeared regular on its face.

It was negligence for Presidential to allow Walsh to gain physical possession of Shaw's \$1,000 check and be able to return that check to Shaw in a Presidential envelope. That check was sent to Presidential with both a cover letter and the check itself stating that the check was for deposit into Shaw's account. However, the returned check was not accompanied by any writing, other than the check, over which Presidential should have maintained control. (There was no evidence of any loan solicitation letter on Presidential's letterhead sent to Shaw.) At most, Presidential caused Shaw to believe that Walsh had authority, despite Shaw's written instructions to the contrary, to reject deposits into Shaw's account at Presidential.

The transaction was not regular on its face. Shaw had, previous to the loan transaction, conducted regular securities transactions through Presidential. However, in this instance, the \$1,000 Check was not deposited into Shaw's account as Shaw had specifically requested in his cover letter and on the check itself. In a regular securities transaction involving Presidential, the \$1,000 check would have been deposited as requested and Walsh would have asked that Shaw deposit an additional \$4,000 into Shaw's account at Presidential. Shaw wired funds, as opposed to mailing an additional check to Presidential. The funds were wired to a previously unknown third-party at an address other than that of Presidential. Further, the loan transaction differed greatly from regular transactions with Presidential in that Shaw was required to obtain wire routing information, go to the 4th and Hope office of Bank of America and pay an additional \$30 for the funds transfer by wire.

Thus, the claim against Presidential is dismissed.

AFFIRMATION

I, Herbert Leslie Greenberg, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Herbert Leslie Greenberg, Esq.

June 19, 1997

Date of award