

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Stanley Zacharski and Jackie Caldwell,

Claimants,

and

No. 96-05109

Barron Chase Securities, Inc. and Craig Gallegos,

Respondents.

REPRESENTATION OF PARTIES

For Claimants: Stanley Zacharski ("Zacharski") and Jackie Caldwell ("Caldwell") (hereinafter collectively referred to as "Claimants") were represented by Jennifer A. Cohs, Esq. of Lavelle Legal Services, Ltd, located in Chicago, Illinois.

For Respondents: Barron Chase Securities, Inc. ("Barron") and Craig Gallegos ("Gallegos") (hereinafter collectively referred to as "Respondents") were represented by Eugene Michael Kennedy, Esq. of Law Office Eugene Michael Kennedy, P.A., located in Fort Lauderdale, Florida.

CASE INFORMATION

Claimants' Statement of Claim filed on: November 15, 1996.
Zacharski's Submission Agreement signed on: November 6, 1996.
Caldwell's Submission Agreement signed on: November 6, 1996.

Respondents' Statement of Answer was filed on: January 21, 1997.
Barron's Submission Agreement was signed on February 10, 1997.
Gallegos' Submission Agreement was signed on February 7, 1997.

HEARING INFORMATION

A pre-hearing conference was held on: July 14, 1997 for one (1) session.
The hearing was held on: July 21, 1997 for two (2) sessions.
The hearing was held in: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Gallegos, while employed by or acting as an agent for Barron, is liable for the unauthorized sale of securities and failure to comply with a sell order. According to Claimants, among other stocks held by Barron in their non-discretionary account were Telefonos de Mexico ("TMX") and Manugistics Group, Inc. ("Manugistics"). Claimants owned the following shares of common stock of TMX: 3,200 shares purchased on October 20, 1994 at \$62.25 per share; 1,300 shares purchased on October 21, 1994 at \$61.38 per share; 87 shares purchased on October 25, 1994 at \$57.00 per share; and 1,200 shares purchased on December 15, 1994 at \$51.38 per share. On November 17, 1995 Barron sold 2,00 shares of their TMX stock at \$26.00 per share, allegedly without Claimants' permission. Claimants calculated their damages from this unauthorized sale at the fifty-two week high of \$38.25 per share times 2,000 shares minus the sale price of \$26.00 per share times 2,000 shares, for a total loss of \$24,500.00.

Claimants further alleged that Barron purchased for Claimants' account 1,000 shares of common stock of Manugistics, effective November 24, 1995, for the price of \$20.00 per share. Claimants instructed Barron to sell the Manugistics stock when it had dropped two points below the \$20.00 per share purchase price, but Respondents failed to sell the Manugistics stock when it dropped to \$18.00 per share. As a result, Claimants were forced to sell the Manugistics stock on May 6, 1996 at \$16.25 per share, at a loss of \$1.75 per share. Claimants calculated their damages here at the expected sale price of \$18.00 per share times 1,000 shares minus the actual sale price of \$16.25 per share times 1,000 shares, for a total loss of \$1,750.00.

Respondents denied the material allegations set forth in the Statement of Claim. Respondents alleged that Claimants transferred their account to Barron while it was concentrated in TMX stock and had a significant amount of margin debt. Gallegos suggested that Claimants sell 2,000 shares of TMX position to reduce their margin debt and diversify the account into other equities. According to Respondents, Claimants agreed to the proposed transactions, ordered the transaction without reservation or constraint, and absolutely understood that the timing of the 2,000 share TMX sale was to be executed by Gallegos at his discretion. In addition, Respondents contended that Gallegos suggested the purchase of 1,000 shares of Manugistics stock and 2,000 shares of New Horizons' stock. Claimants agreed, ordered those purchases, and instructed Gallegos to do so as market orders following Gallegos' explanation of the term. Respondents alleged that at no time prior to the Statement of Claim did Claimants protest either the 2,000 share TMX sell order at \$26.00 per share, or the Manugistics or New Horizons purchases. In addition, Respondents asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested an award for compensatory damages of \$24,500.00 due to the wrongful sale of

the shares of TMX and \$1,750 due to the failure to comply with instructions to sell the Manugistics stock, plus costs and attorneys' fees.

Respondents requested that the claims asserted against them be dismissed with prejudice and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND 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 originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") the following forum fees are assessed: One (1) pre-hearing session x \$300.00 = \$300.00; Two (2) hearing sessions x \$300.00 = \$600.00; Total Forum Fees = \$900.00.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$100 and shall retain as forum fees the hearing session deposit of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants. Respondent Barron Chase Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the sum of \$600.00 (= \$900.00 total forum fees - \$300 hearing session deposit by Claimants). In addition, Respondent Barron Chase

97102116

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration Number 96-05109
Award Page 4 of 4

Securities, Inc. is liable for and shall pay to Claimants Stanley Zacharski and Jackie Caldwell the sum of \$300.00 as reimbursement of the hearing session deposit of \$300.00.

Pursuant to § 10333 of the Code, Respondent Barron Chase Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$200.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Arbitrator's Signature

/s/ Sheldon I. Saitlin, Esq.
Sheldon I. Saitlin, Esq.
Chairperson
Public Arbitrator

August 26, 1997
Dated:

~~For NASD use only:~~ Date Award was served on the parties: August 29, 1997