

NASD REGULATION INC., AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dale W. Davis

96-05350

Name of Respondent

First Chicago NBD Investment Services

REPRESENTATION

Claimant, Dale W. Davis was represented by Leigh R. Pietsch, Esq. of Pietsch, Cuchna & Popejoy, Wheaton, Illinois.

Respondent, First Chicago NBD Investment Services was represented by John Simmons, Esq. of First Chicago NBD, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed with NASD Regulation, Inc. Office of Dispute Resolution on December 2, 1996.

Claimant, Dale W. Davis' Submission Agreement was signed on November 26, 1996.

The Statement of Answer was filed with NASD Regulation, Inc. Office of Dispute Resolution on January 7, 1997 by Respondent, First Chicago NBD Investment Services.

Respondent, First Chicago NBD Investment Services' Submission Agreement was signed on January 6, 1997 by Diane Ichihashi, Compliance Manager.

HEARING INFORMATION

The hearing took place on July 22, 1997 and lasted for one hearing session.

The hearing location was Chicago, Illinois.

CASE SUMMARY

Claimant, Dale W. Davis ("Davis"), alleged that on or about July 18, 1996 he met with Mr. Marty Beck ("Beck") of Respondent, First Chicago, NBD Investment Services ("First Chicago") in order to take the steps necessary to redeem Davis' shares of Vanguard Wellington Fund ("Vanguard") and use the proceeds to purchase shares of common stock in Coca-Cola Company. Davis asserted that he signed all the documents prepared by Beck in order to accomplish the redemption and departed the office of First Chicago. According to Davis, he was subsequently informed that all the paperwork prepared on July 18, 1996 had either been lost or misplaced and that Davis would need to come back into the office of First Chicago to execute the documents again.

Davis did as he was told and the documents were then delivered to First Priority Services, the mailing vendor of First Chicago on July 31, 1996. Mistakenly, the package containing the documents signed by Davis was sent to Van Kampen rather than Vanguard. This mistake was apparently not discovered until August 7, 1996. Davis, who was on Washington Island, WI at that time received an overnight express package containing another copy of the necessary transfer paperwork on August 9, 1996. Davis immediately signed the paperwork and forwarded same to Vanguard by overnight express mail. Vanguard received the IRA transfer letter and the request for redemption on August 12, 1996. The redemption took place on August 13, 1996 and the proceeds were mailed by Vanguard to First Chicago on August 13, 1996 via UPS second day air. First Chicago received the redemption proceeds check on August 15, 1996 and on Monday, August 19, 1996 purchased the Coca-Cola stock for Davis at a price of 52 1/8 per share. This was \$6.00 per share more than the stock price of Coca-Cola at the close of business on July 25, 1996.

First Chicago denied any allegations of negligence on its part and denied liability to Davis for any delay in redemption of his shares of Vanguard. Specifically, First Chicago denied Davis had met with Beck on or about July 18, 1996 or that Davis was advised on July 29, 1996 that the paperwork allegedly signed by Davis on that date was lost or misplaced as claimed by Davis. Instead, First Chicago alleged that the forms necessary for redemption were left at the front desk of the First Chicago Wheaton Office so that Davis could come in and sign the documents at his convenience. First Chicago alleged that the transfer form was returned to First Chicago on July 31, 1996 although it was dated July 29, 1996.

First Chicago admitted that Beck checked with Vanguard on the status of the redemption and fund transfer and learned only then that Vanguard had not received Davis' redemption request. Beck's further investigation determined that the redemption documents had been sent inadvertently to the wrong addressee. First Chicago admitted that, upon this discovery, the redemption document was forwarded to Davis on Washington Island, WI. Thereafter, First Chicago received the redemption proceeds from Vanguard on August 19, 1996. First Chicago then placed an order for the purchase of Coca-Cola Company shares for Davis on August 19, 1996.

RELIEF REQUESTED

Davis requested damages of \$8,250.00 and legal fees in the amount of \$1,590.00. At the

hearing, Davis increased his prayer for attorney's fees to the sum of \$4,347.50.

First Chicago requested dismissal of the claim in its 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 determination as follows:

1. First Chicago is liable for and shall pay to Davis, the sum of Four thousand six hundred forty dollars and sixty-three cents (\$4,640.63);
2. First Chicago is also liable and shall pay to Davis, the sum of two thousand eight hundred sixteen dollars and twenty-five cents (\$2,816.25) as attorney's fees; and
3. Other than forum fees which are addressed below, the parties shall each bear any other costs or expenses incurred in this proceeding.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, ("the Code") the following Forum Fee(s) are assessed. NASD Regulation, Inc. shall retain the non-refundable \$75.00 claim filing fee and the \$200.00 hearing session deposit previously filed by Davis with NASD Regulation, Inc. First Chicago is directed to reimburse Davis in the amount of \$275.00. Pursuant to Rule 10333 of the Code, NASD Regulation, Inc. shall also retain the member surcharge assessed to First Chicago in the amount of \$100.00.

Forum Fees were assessed at the rate of \$200.00 per hearing session for one (1) hearing session. No additional forum fees are due or payable from the parties to NASD Regulation, Inc.

Arbitrator's Signature

/s/ Barry E. Simon
Barry E. Simon, Esq.
Presiding Public Arbitrator

July 29, 1997
Dated

Date Decision forwarded to the Parties by NASD Regulation, Inc.: July 29, 1997