

9809026

NASD REGULATION, INC.
FINAL ORDER

In the Matter of the Arbitration Between

Name of Claimant

Shannon K. Kelly

96-05371

Name of Respondents

State Street Capital Markets Corp.
John Doukas
Thomas A. Cocuzza

REPRESENTATION

Claimant Shannon K. Kelly ("Claimant") appeared *pro se*

For Respondents State Street Capital Markets Corp. ("State Street") and John Doukas ("Doukas") appeared Scott L. Silver, Esq., of the law offices of Gusrae Kaplan & Bruno located in New York, New York.

Respondent Thomas A. Cocuzza ("Cocuzza") appeared *pro se*.

CASE INFORMATION

Claimant's Statement of Claim was filed on December 2, 1996.

Claimant's Submission Agreement was signed on November 26, 1996.

A Joint Statement of Answer and cross-claim was filed by State Street and Doukas on February 4, 1997.

State Street did not file a properly executed Submission Agreement.

Doukas did not file a properly executed Submission Agreement.

Cocuzza did not file a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:

April 22, 1998
June 30, 1998

One Session
One Session

CASE SUMMARY

Claimant alleged that, in August 1996, she transferred 4,000 shares of a particular stock and deposited \$51,666.50 into her account at State Street. Claimant contended that, without her knowledge or authority, her broker purchased stock with the cash in her account. In addition, Claimant contended that her broker sold the securities which were in her account, without her authorization. Claimant maintained that she never spoke with Cocuzza, her broker, but that eight of the fourteen trades in her account were marked solicited. Claimant alleged that Cocuzza took orders for her account from her brother, despite the fact that Claimant had not authorized anyone to trade on her behalf.

State Street and Doukas maintained that Claimant authorized all transactions in her account, and received confirmations for all activity in her account. State Street and Doukas contended that, any difficulty Claimant had in receiving confirmations was a result of Claimant's failure to provide her address to respondents. In addition, State Street and Doukas contended that, any losses incurred by Claimant, were the result of market activity. In its cross-claim, State Street alleged that, if Cocuzza made statements suggesting that the securities in Claimant's account could not be sold, such statements were inconsistent with internal guidelines and constituted a breach of the fiduciary duties owed to it.

RELIEF REQUESTED

Claimant requested the return of 4,000 shares of Country Star Restaurants, damages in the amount of \$44,225.00, punitive damages, and costs, including attorneys' fees and forum fees.

State Street and Doukas requested that the Statement of Claim be dismissed in its entirety and all costs of this proceeding be assessed against Claimant, including attorneys' fees. In its cross-claim, State Street requested that all amounts for which State Street may be found liable be assessed against Cocuzza.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Final Order in this matter may be executed in counterpart copies or that a handwritten, signed Final Order may be entered. In either case, the parties have agreed to receive conformed copies of the Final Order while the originals remain on file with NASD Regulation, Inc.

The panel made the following determinations concerning Cocuzza who did not file a Statement of Answer or a Submission Agreement and did not appear at the pre-hearing conferences in this matter; and State Street and Doukas who did not file properly executed Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Cocuzza and Doukas were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Cocuzza and Doukas pursuant to Rule 10301 of the Code.

3. The panel found that State Street was a member of the NASD at the time this controversy arose. Accordingly the panel found personal jurisdiction over State Street pursuant to Rule 10301 of the Code.
4. The panel found that Cocuzza was required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Cocuzza pursuant to Rule 10314 (a) of the Code.
5. The panel found that State Street and Doukas were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon State Street and Doukas pursuant to Rule 10314(a) of the Code.
6. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Cocuzza with "due notice" of the pre-hearing conferences conducted in this matter by regular and certified mail. The panel further determined to proceed with the pre-hearing conferences without Cocuzza whose absence was unexcused.

Claimant did not participate in the pre-hearing conferences conducted on April 22, 1998 or June 30, 1998. By letter dated June 30, 1998 claimant was notified that the arbitrators determined that Claimant was required to submit a response to the Motion to Dismiss submitted by State Street and Doukas by July 20, 1998. Claimant was also notified that, if she did not submit a response to the Motion to Dismiss by July 20, 1998, the arbitrators would grant the Motion. Therefore on July 20, 1998, since Claimant did not submit a response to the Motion to Dismiss, after due deliberation and consideration of all submissions and arguments, the arbitrators granted State Street and Doukas' Motion to Dismiss. Therefore, all claims against respondents are hereby dismissed.

OTHER COSTS

Pursuant to Rule 10333 of the Code, State Street has paid to NASD Regulation, Inc. the \$200.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$120.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

2 Pre-hearing conferences (with 2 arbitrators) x \$400.00 \$800.00

1. Claimant be and hereby is liable for the sum of \$400.00 representing one-half of the total amount of forum fees assessed.
2. Claimant and Cocuzza be and hereby are liable for and shall pay to NASD Regulation, Inc. the sum of \$400.00 representing one-half of the total amount of


forum fees assessed. By letter dated April 28, 1998, Claimant and Cocuzza were previously advised of the arbitrators' determination to assess them for the cost of the pre-hearing conference conducted on April 22, 1998.

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ARBITRATION PANEL

Karimu F. Hill-Harvey, Esq.	-	Public Chairperson
Simon S. Kogan, Esq.		Public Arbitrator
Robert L. Spangler		Industry Arbitrator

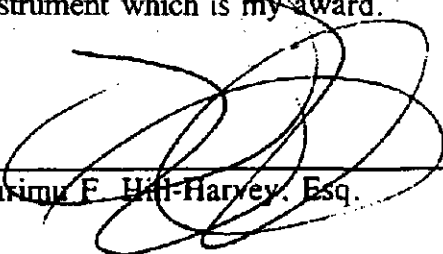
CONCURRING ARBITRATOR'S SIGNATURE



Karimu F. Hill-Harvey, Esq.
Chairperson - Public Arbitrator

Date of decision: September 2, 1998

I, Karimu F. Hill-Harvey, 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.



Karimu F. Hill-Harvey, Esq.

ARBITRATION PANEL

Karimu F. Hill-Harvey, Esq.	-	Public Chairperson
Simon S. Kogan, Esq.	-	Public Arbitrator
Robert L. Spangler		Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

Simon S. Kogan, Esq.
Public Arbitrator

Date of decision: September 2, 1998

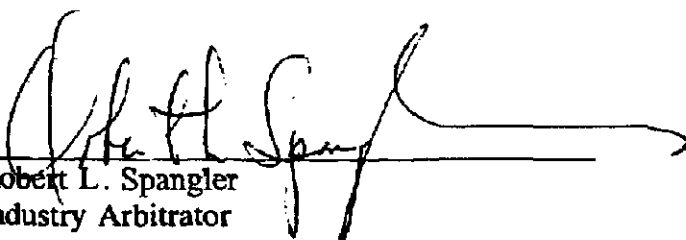
I, Simon S. Kogan, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Simon S. Kogan, Esq.

ARBITRATION PANEL

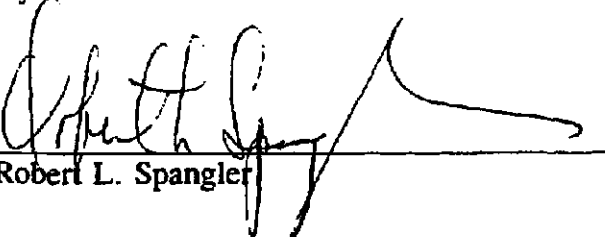
Karimu F. Hill-Harvey, Esq. - Public Chairperson
Simon S. Kogan, Esq. - Public Arbitrator
Robert L. Spangler - Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

Robert L. Spangler
Industry Arbitrator

Date of decision: September 2, 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