

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

John F. Davie

96-05648

Name of Respondent

American Express Financial Advisors, Inc

REPRESENTATION

For Claimant, John F. Davie ("Claimant") appeared Howard E. Berman, Esq., of Farrauto, Berman, Fontana & Selznick located in Yonkers, New York.

For Respondent, American Express Financial Advisors, Inc. ("Respondent"), appeared Gary Irwin, Esq., of in-house council, located in Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim was filed on December 20, 1996.

Claimant's Submission Agreement was signed on January 6, 1997.

Statement of Answer was filed by Respondent on February 28, 1997.

Respondent's Submission Agreement was signed on January 29, 1997.

HEARING INFORMATION

Hearing Date/Sessions: June 10, 1997 - Two Sessions

The hearings were held in the offices of NASD Regulation located in New York, New York.

CASE SUMMARY

Claimant alleged that he purchased shares of Inference Corp. ("INFR") from Respondent in October, 1996. Claimant further alleged that, on the same day of the purchase, he received confirmation that he had sold an equal number of shares of the same company. Claimant maintained that he had relied on this confirmation and believed that the proceeds had been placed in his account. Claimant further maintained that when the stock value dropped several weeks later, to nearly 1/3 its former value, he discovered that it had not been sold.

Respondent maintained that, in October 1996, Davie placed an order through his self-directed brokerage account to sell shares of Sun Microsystems ("SUNW") and to use the proceeds to buy shares of INFR. Respondent further maintained that when the trader entered the purchase into the brokerage account it was accidentally coded as a "sell" order. Respondent maintained that, as a result of the error, the confirmation sent to Claimant indicated that he had sold both his SUNW holdings and his INFR holdings, however, the error was caught immediately and two corrected confirmations were sent the next day. Respondent further maintained that the first confirmation indicated that the INFR sell order was canceled and the second confirmed the purchase of INFR stocks. Respondent also maintained that at the end of October, 1996 the monthly brokerage statement was sent to him which reconfirmed all of the transactions. Respondent contended that since these were the only transactions during the entire month, the error, its correction and subsequent re-confirmation should have been clear to Claimant.

RELIEF REQUESTED

Claimant requested unspecified damages in an amount which represented the difference in the spread between the purchase price and the present value.

Respondent requested that Claimant's claim be dismissed in its entirety.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. The parties are to bear their respective costs, including attorney's fees.
3. All other requests for relief are denied.

FORUM FEES

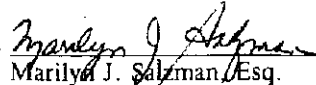
Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

$$2 \text{ Hearing Sessions} \quad \times \quad \$600 \quad = \quad \$1,200.00$$

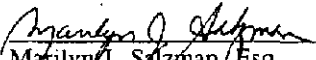
1. Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$600.00, representing one-half of the forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation. Therefore, Claimant owes nothing in forum fees.
2. Respondent be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$600.00, representing one-half of the forum fees assessed. Therefore, Respondent shall pay to NASD Regulation, Inc. the sum of \$600.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES


Marilyn J. Salzman, Esq.
Public Arbitrator - Chairperson

I, Marilyn J. Salzman, 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.


Marilyn J. Salzman, Esq.

Herbert Siegel, Esq.
Public Arbitrator

I, Herbert Siegel, 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.

Herbert Siegel, Esq.

Paul Kanischak
Industry Arbitrator

I, Paul Kanischak, 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.

Paul Kanischak

Date of Decision: October 7, 1997

ARBITRATORS' SIGNATURES

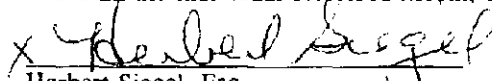
Marilyn J. Salzman, Esq.
Public Arbitrator - Chairperson

I, Marilyn J. Salzman, 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.

Marilyn J. Salzman, Esq.

x 
Herbert Siegel, Esq.
Public Arbitrator

I, Herbert Siegel, 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.

x 
Herbert Siegel, Esq.

Paul Kanischak
Industry Arbitrator

I, Paul Kanischak, 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.

Paul Kanischak

Date of Decision: October 7, 1997

ARBITRATORS' SIGNATURES

Marilyn J. Salzman, Esq.
Public Arbitrator - Chairperson

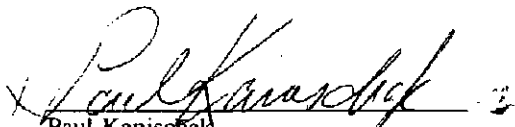
I, Marilyn J. Salzman, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Marilyn J. Salzman, Esq.

Herbert Siegel, Esq.
Public Arbitrator

I, Herbert Siegel, 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.

Herbert Siegel, Esq.

X 
Paul Kanischak
Industry Arbitrator

I, Paul Kanischak, 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.

X 
Paul Kanischak

Date of Decision: October 7, 1997