

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Metta Foundation

v.

Arbitration No.
96-05805

Name of Respondent(s)

Howard S. Gelfand

REPRESENTATION

For Claimant: Wade F. Hyder, Esq.
Santa Rosa, California

For Respondent: Howard S. Gelfand
New York, New York

CASE INFORMATION

Statement of Claim filed December 26, 1996.

First Amended Statement of Claim filed August 22, 1997.

Claimant's Submission Agreement signed December 26, 1996.

Statement of Answer filed April 17, 1997.

First Amended Statement of Answer filed September 18, 1997.

Respondent's Submission Agreement signed: None Submitted.

HEARING INFORMATION

The hearing was held in San Francisco, California, on June 9, 1998, and lasted one session.

CASE SUMMARY

Claimant alleged misrepresentation, omission of facts, breach of fiduciary duty, negligence, failure to supervise and failure to execute arising out of Respondent's failure to execute buy and sell orders as instructed, in a timely manner, and failing to inform Claimant of these facts. Claimant stated it purchased units and common shares of International Dispensing Corporation on October 10, 1996 at \$12.00 per share and October 23, 1996 at \$9.00 per share, but upon learning that the opening price of the shares on October 23 was \$7.50 per share, Claimant faxed written instructions to sell its entire position on October 24, 1996. Claimant stated it faxed a written complaint concerning the failure to sell on November 2, 1996, and faxed further written instructions to sell on November 10, 1996. Claimant alleged that on December 2, 1996, 4,000 units of International Dispensing Corporation remained unsold.

Respondent denied the allegations of the claim, and stated that Claimant failed to state a claim for which relief could be granted, that the claims are barred by the principles of waiver and ratification, and that Respondent had acted in good faith.

RELIEF REQUESTED

Claimant requested damages of \$142,000.00 for Respondent's failure to sell 4,000 units, plus \$42,000.00 for charging Claimant \$9.00 per share on his October 23 purchase when the opening price that day was \$7.50 per share, plus interest, punitive damages, costs of arbitration and attorney's fees.

Respondent requested dismissal of all claims.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not appear at the arbitration hearing. The panel of arbitrators determined that he had been properly notified of the date, time and place of hearing, and that he was subject to jurisdiction of the panel.

The party in attendance at the hearing agreed to receive copies of the Award, while the originals remain on file with NASDR, Inc.

AWARD

The undersigned arbitrators, having considered the pleadings, the testimony and the evidence presented at the hearing, have determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$70,000.00 in satisfaction of all claims.

2. The claims for interest, punitive damages, costs and attorney's fees are dismissed.

FORUM FEES

Pursuant to Section 10334 of the Code of Arbitration Procedure, the NASDR shall retain Claimant's \$200.00 non-refundable filing fee, and shall refund the \$750.00 hearing session deposit.

Respondent is assessed forum fees of \$750.00 for one hearing session, payable to NASDR, Inc.

Concurring Arbitrators Signatures
Name

Public/Industry

Theodore W. Phillips
Presiding Chairperson

Public

Marc David Freed

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Mary Curran

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