

N.A.S.D. REGULATION AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Brent Berti

CASE  
97-00095

Name of Respondent

Waterhouse Securities, Inc.

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**REPRESENTATION**

Claimant Brent Berti ("Claimant") appeared pro se.

Respondent Waterhouse Securities, Inc. ("Respondent") was represented by Arnold J. Feist, Waterhouse Securities, Inc.

**CASE INFORMATION**

The Statement of Claim was received January 8, 1997.

Claimant's Uniform Submission Agreement was signed February 10, 1997.

Respondent's Statement of Answer was filed April 15, 1997.

Respondent's Uniform Submission Agreement was signed April 14, 1997.

**HEARING INFORMATION**

Prehearing Conference Date/Sessions: February 11, 1998/one session

Hearing Date/Sessions: March 26, 1998/one session

Hearing Location: NASD Regulation, Office of Dispute Resolution  
New York, NY

**CASE SUMMARY**

Claimant alleged that due to Respondent's misrepresentation that they could not accept stop orders at the time he attempted to place a stop order on his account, he lost over \$30,000.00. Claimant asserted that on May 7, 1996 he held 5,000 shares of IMP Inc. ("IMPX") in his account, which having dropped in value, he wanted to protect against any further significant drop. Claimant alleged that he was informed by Respondent that he could not place a stop order

where in fact, Respondent had changed their procedures and that Claimant could have placed a stop order to protect his assets. Claimant further alleged that later on that same day, the market in IMPX began to drop and went from \$22.50 to \$15 1/8 before his order to sell on May 8, 1998 could be executed. Claimant asserted that Respondent admitted that they had instituted a change in procedure and stop orders could be placed, which the agent dealing with Claimant should have explained. Claimant alleged that while he did his own trading he expected Respondent to accurately represent what could and could not be done in terms of trading, when he had specifically requested a stop order be placed on his account and Respondents stated, at that time, they did not have the ability to do so.

Respondent denied the allegations of wrong-doing as asserted in the Statement of Claim. Respondent maintained that as a discount brokerage, they do not solicit orders or offer investment advice. Respondent maintained that Claimant never requested that a stop order be placed on IMPX on May 7, 1998 and only after the dramatic drop in value, Claimant informed Respondent that had Respondent informed him on May 7, 1998 of the ability of placing a stop order on his account he would have done so at \$20.00. However, Respondent further maintained Claimant is an experienced investor and had a responsibility to monitor his investments. Respondent raised the affirmative defenses of a failure to state a cause of action upon which relief can be granted and that Respondents discharged all fiduciary obligations owed to Claimant in conformity with relevant industry regulations and acted in good faith at all times.

#### **RELIEF REQUESTED**

Claimant requested \$27,500.00 in damages.

Respondents requested that the Statement of Claim be dismissed and that Claimant bear all expenses of Respondent in connection with this arbitration.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD Regulation.

### **AWARD**

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

1. That Respondent is liable to and shall pay to Claimant \$15,000.00; and
2. That each party shall bear its own costs and expenses except as specifically provided for below in the Forum Fees section; and
3. That any and all relief not specifically addressed herein is denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the NASD Regulation Code of Arbitration Procedure ("Code"), Respondent is assessed a member surcharge of \$200.00.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

1 prehearing session x \$300.00 = \$300.00

1 hearing session x \$300.00 = \$300.00

**Total Forum Fees                      \$600.00**

Forum Fees are assessed at \$300 to Claimant and \$300.00 to Respondent. Claimant shall receive credit for the \$300.00 hearing session deposit submitted previously to the NASD, leaving no further Forum Fees due from Claimant. Respondent has a net Forum Fees assessment due of \$300.00.

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

**ARBITRATOR'S AFFIRMATION AND SIGNATURE**

I, Susan C. Lushing, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law & Rules, that I am the individual described herein who executed this instrument which is my Award.

April 24, 1998  
Date

Susan C. Lushing  
Susan C. Lushing, Presiding  
Public Arbitrator

Date Decision Served by NASD Regulation: May 5, 1998