

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Joseph Barberio

vs.

Case No.
97-00455

Names of Respondents

First Albany Corporation
Steven Lleras
John Tubman

REPRESENTATION

Claimant Joseph Barberio appeared pro se.

For Respondents First Albany Corporation ("First Albany"), Steven Lleras ("Lleras") and John Tubman ("Tubman"), hereinafter collectively referred to as "Respondents," appeared Brian Mumford, Esq. of the law firm Harvey and Harvey and Mumford located in Albany, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on January 17, 1997. Claimant's Submission Agreement was signed on February 6, 1997.

Respondents filed a Joint Statement of Answer on March 20, 1997. Respondent First Albany's Submission Agreement was signed on March 13, 1997. Respondent Lleras' Submission Agreement was signed on March 19, 1997. Respondent Tubman's Submission Agreement was signed on March 18, 1997.

HEARING INFORMATION

Pre-Hearing Conference: August 22, 1997 - One Session

Hearing Date/Sessions: November 19, 1997 - Two Sessions

The pre-hearing conference was held telephonically. The hearing was conducted at the Crowne Plaza Rochester located on State Street in Rochester, New York.

CASE SUMMARY

Claimant alleged that, after reviewing his account, Respondents agreed to accept the transfer of Claimant's margin account from Equity Securities Trading Co., Inc. Claimant also alleged that this transfer was predicated upon Claimant maintaining 40% minimum equity in the account. Claimant further alleged that he transferred additional securities into the account which increased the equity in the account.

Claimant stated that, after accepting the account, Respondent Lleras pressured Claimant to liquidate the account to eliminate the margin debt, even though the equity in the account was approximately 50%. Claimant also stated that he found another firm that was willing to accept his account with the current equity in the account and Respondent Tubman agreed to allow the transfer to another firm.

Claimant contended that before the transfer could be done, Respondent Lleras liquidated his account without giving Claimant notice.

Respondents denied the allegations of wrongdoing and denied liability. Respondents asserted five affirmative defenses. Respondents maintained that they liquidated Claimant's securities in order to bring Claimant's account into compliance with Respondent First Albany's House Maintenance Policy, which prohibits securities valued below \$4.00 per share from being margined. Respondents also maintained that they would accept his account on the condition that Claimant settle the margin debit within two weeks of the transfer. Respondents further maintained that Claimant transferred his account from Equity Securities to Barber & Bronson, Inc. and later transferred it to Respondent First Albany. Respondents contended that Claimant failed to settle the debit required and tried to transfer his account to other firms on three separate occasions. Respondents also contended that the firms rejected the transfer and Respondents gave Claimant written notice that he had until December 17, 1996 to settle the debit. Respondents stated that they liquidated the securities starting on December 18 and did not charge a commission. Respondents also stated that after the liquidation, Claimant's account had a cash balance of \$565.56 and held stocks with a value of \$113,360.88. Respondents further contended that they sold the Akorn and UGN securities after providing Claimant with notice and an opportunity to respond, and after attempting to assist Claimant in transferring his account to other brokerage firms.

RELIEF REQUESTED

Claimant requested a reversal liquidation of 12,500 shares of Akorn and 22,925 shares of UGN.

Respondents requested that the Claimant's claims be dismissed and that an award be rendered against Claimant for the costs, administrative expenses and attorneys' fees in connection with this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

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

1. Claimant's claims are hereby dismissed in their entirety.
2. Each party shall bear its respective costs, including attorneys' fees.
3. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code of Arbitration Procedure*, the arbitrators have assessed the following forum fees:

1 Pre-hearing Conference x \$300.00	=	\$ 300.00
2 Hearing Sessions x \$600.00	=	\$1,200.00
Total Forum Fees	=	\$1,500.00

The arbitrators have determined that Respondents shall jointly and severally pay one-hundred percent of the total forum fees.

1. Respondents First Albany, Lleras and Tubman be and hereby are jointly and severally liable and shall pay the sum of \$1,500.00, representing one-hundred percent of the total forum fees assessed.
2. Claimant be and hereby is liable and shall pay the sum of \$250.00, representing the filing fee for this arbitration.
3. Respondent First Albany be and hereby is liable and shall pay the sum of \$350.00 for the Member Surcharge. Respondent First Albany has submitted the sum of \$350.00, and, therefore, does not owe the Member Surcharge.

Fees are payable to NASD Regulation, Inc.

CONCURRING ARBITRATORS' SIGNATURES

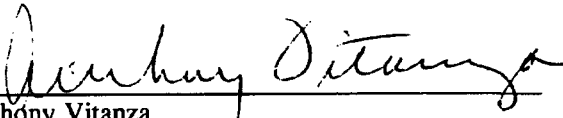
I, Robert D. Herschman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

Robert D. Herschman, Esq.
Public Chairperson

I, Vincent J. Muffoletto, 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.

Vincent J. Muffoletto
Public Panelist

I, Anthony Vitanza, 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.



Anthony Vitanza
Industry Panelist

Date of Decision: January 21, 1998