

AWARD
NASD REGULATION, INC

In the matter of the Arbitration Between

Name of Claimant(s)

Michael E. Mitchell
Jennifer J. Mitchell

v.

Arbitration No.
98-00289

Name of Respondent(s)

J.B. Oxford & Company
Rick White

REPRESENTATION

For Claimants: Michael E. Mitchell
Fremont, California

For Respondents: Jeffrey S. Kob, Esq.
Cynthia M. Schleindl, Esq.
Miller, Milove & Kob
San Diego, California

CASE INFORMATION

Statement of Claim filed: January 23, 1998

Claimants' Submission Agreement signed: March 16, 1996 (sic)

Joint Statement of Answer filed: April 2, 1998

Respondents' Submission Agreements signed:

J.B. Oxford & Co.: March 12, 1998
Rick White: None Submitted

HEARING INFORMATION

Pre-hearing telephone conferences were held as follows:

July 31, 1998	-	1 session
September 18, 1998	-	1 session

The evidentiary hearing was held in San Francisco, California, on November 23, 1998, and lasted two sessions.

CASE SUMMARY

This action arises out of the buy and sell orders for Netscape (NSCP) on August 9, 1995, the day of its initial offering. Claimants Michael and Jennifer Mitchell ("Mitchell") contended that respondent J.B. Oxford, ("Oxford") through its registered representative Rick White, ("White") failed to execute his buy and sell orders in a timely fashion and failed to return his phone calls as promised. Respondents generally denied all of the allegations.

RELIEF REQUESTED

Claimant sought \$8,000.00 in trading losses and \$6,000.00 in lost profits. Respondents requested that all claims be dismissed.

DISCUSSION

The parties agreed that telephone records, Statement of Claim, and the Order Execution Report established the times of claimant's calls to respondent, Rick White ("White") as follows: On August 8, 1995, the day before the opening, Mitchell placed an order for the purchase of 2000 shares of Netscape at the opening of the market on August 9, 1995. The order was placed at 5:46 a.m. Pacific Standard Time ("PST") on August 9, 1995 and confirmed at 09:44 a.m., one hour and 40 minutes after the start of the market. At all times, Mitchell was monitoring the stock quotes on his Quotrek system. The stock opened at \$71.00 a share and at 8:07 a.m. PST Mitchell called and placed a sell order for \$73.00 a share. At that time, Mitchell knew the confirmation of the buy had not been received. At 8:41 a.m. Mitchell called to change the sell order to \$74.00 a share. Mitchell was advised that the buy confirmation had not as yet been received. At 9:57 a.m. PST, Mitchell called and spoke with another representative who confirmed the purchase at \$71.00 a share and also told him he did not see a sell order. At 10:14 a.m. Mitchell spoke with White who confirmed the purchase and that a sell order had not been placed. Since the stock had been moving down, Mitchell placed a sell order at the market. The shares were sold at \$67.00 a share for a total loss of \$8,000.00.

The preponderance of the evidence established that the activity in the initial public offering of Netscape was extraordinary. The demand was so high that the size of the initial offering was increased and the price raised from \$14.00 a share to \$28.00 a share before the opening and the shares opened at \$71.00. Delays were reported by customers of other firms in changing or canceling buy orders after Netscape began trading.

Mitchell contends that Oxford should be held to a standard of 28 minutes delay for the confirmation of the buy order based on the delay reported by Fidelity. Had the confirmation and sale occurred within that time period, he would have sold at \$73.00 a share. However, the testimony established that the sell order could not be placed until the buy order was confirmed. The buy order was confirmed at 10:44 MST (Respondent's Exhibit 11). The Nasdaq bid and ask prices submitted at the chair's request establish that the prevailing bid and ask at the time of confirmation of the buy (09:44 PST) was \$68.25 by \$69.25. At no time after that did the shares sell for either sell order placed by Mitchell (\$73.00 and \$74.00). Had the buy order been confirmed at the time that Mitchell called to change his sell order to \$74.00 a share, the sale could not have been executed since at that time (11:41 EST), Netscape was selling under that price.

Additionally, Mitchell contends that Oxford should be held accountable for White's failure to call him as promised. However, no authority was submitted to support this contention. Further, the evidence was that Mitchell knew the investment in an IPO was risky, that he had invested in other IPO's and that he knew the buy order had not been confirmed at the time he placed his sell orders.

Claimants failed to establish that, under the facts of this particular trade, respondent had a duty to execute the trade within the time frame set out above so that no loss or less loss would have been suffered or anticipated profits realized. It is regrettable that White did not advise Mitchell of the confirmation of the buy order as soon as it was received, in view of Mitchell's testimony that White had promised he would call him. However, under all the circumstances surrounding the trading that morning, the arbitrator finds that neither White nor Oxford breached any duty owing to Mitchell.

AWARD

Wherefore, in full and final resolution of the issues submitted for determination, the undersigned arbitrator orders that:

1. The claim in its entirety be and is hereby dismissed, with prejudice.
2. Each side shall bear their own costs of arbitration, including attorney's fees.

FORUM FEES

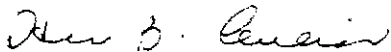
Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimants' \$100.00 non-refundable filing fee, but shall refund their \$450.00 hearing session deposit. The NASDR shall also retain J.B. Oxford's \$400.00 member surcharge.

Respondent J.B. Oxford is assessed all forum fees, as follows, payable to the National Association of Securities Dealers Regulation, Inc.

2 pre-hearing telephone conferences @ \$300/session	\$ 600.00
2 hearing sessions @ \$400/session	<u>\$ 800.00</u>
Balance Due:	<u>\$ 1,400.00</u>

Concurring Arbitrators Signatures:

Public/Industry



Public

Helen B. Culiner
Presiding Chairperson

Date Served:
JAN 07 1999