

Award
NASD Dispute Resolution, Inc.

in the Matter of the Arbitration Between

Name of Claimant

Bynor Corp. Pension Profit Sharing Trust

Case No. 99-03405

Name of Respondent

Web Street Securities, Inc.

REPRESENTATION OF PARTIES

For Bynor Corp. Pension Profit Sharing Trust ("Bynor"), hereinafter referred to as "Claimant":
W. Andrew Clayton, Jr., Esq. of Wallace, Browning, Clayton & Krawetz, Sarasota, Florida.

For Web Street Securities, Inc. ("Web Street"), hereinafter referred to as "Respondent":
Robert J. Kuker, Esq. and Christopher M. Burky, Esq. of Neal, Gerber & Eisenberg,
Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: July 26, 1999.
Claimant signed the Uniform Submission Agreement: April 22, 1999.
Statement of Answer filed by Respondent on or about: January 17, 2000.
Respondent did not file a properly executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: Violation of the Florida Securities Act; equitable rescission; breach of fiduciary duty; negligence; breach of contract; fraud; and negligent misrepresentation. The causes of action relate to the order execution of shares of Yahoo, Inc. ("**Yahoo**") stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following: Web Street entered each of Claimant's orders as requested by Claimant himself. Web Street should not now be held responsible as a guarantor for Claimant's own trading decisions which caused him to lose money. Claimant fully acknowledges that he embarked upon a highly risky strategy of short selling Yahoo, and he should not be allowed to now shift his own responsibility for that strategy to Web Street which followed the instructions it was given by Claimant.

RELIEF REQUESTED

Claimant requested compensatory and statutory damages against Respondent in the sum of \$26,034.12 together with interest, attorneys' fees pursuant to the Florida Securities and Investors Protection Act, F.S. 517.01, et seq., costs, and such further relief as the arbitration panel deemed just and equitable.

Respondent requested that Claimant's claims be denied in their entirety and that Web Street be awarded its costs and attorneys' fees incurred in connection with the defense of this case.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure (the "Code"), and having answered the claim, appeared and testified at the hearing is bound by the determination of the Arbitrator on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered

AWARD

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

Inasmuch as this dispute arose out of the realm of website trading, one of the last few remaining new frontiers, and inasmuch as the case is a single arbitrator case, and because of the unusually difficult factual scenario, the Arbitrator feels compelled to submit its findings in writing.

It is undisputed that the Claimant in this case submitted a short order for the sale of 1,000 shares of Yahoo stock at 13:35:36 on January 22, 1999 and that approximately 8 minutes later that order was filled by Respondent. At this point, however, the factual presentations of both parties become virtually irreconcilable.

The Claimant insists that he attempted, within a matter of minutes and shortly after he observed that the price of the volatile Yahoo stock was not dropping as anticipated, on four occasions, to place a limiting order to sell the stock at \$274.00. These attempts were made within a time span of approximately four to twelve minutes. Each attempt was rejected by Web Street's computer program with the notation "no more business allowed."

After the fourth attempt, Mr. Byron made a telephone call to Web Street at approximately 3:52 p.m. He relayed his problem briefly and then placed a limiting order at \$274.00. He was then transferred to a customer representative to deal with the question of whether or not

he had provided Web Street with all of the account documentation he was required to provide. By the time he concluded that conversation, trading for the day had ceased at 4:00 P.M. The price of the stock had gone through an approximate four minute window at which it could have been sold at \$274.00, but that window occurred prior to him placing his limit order at 3:52.

Mr. Byron called back again on Monday morning, and by that time the stock opened at \$297.00. He was told by the account representative that there was nothing he or Web Street could do and that Web Street had done everything that it had been asked to do. Mr. Byron was asked why he had not placed a market order on Friday afternoon. Mr. Byron called back again later on Monday, the 25th of January, and closed out his position at \$301.00 per share.

Web Street presented internal computer documentation for the initial order, for the acceptance of the order, for the filling of the order and the limiting order placed at 3:52 but no documentation was available for the four attempts testified to by Mr. Byron to place a limiting order through his computer. Three of the four internal computer memoranda contained a notation to the following effect: "ZN no more business allowed."

The Web Street representative testified that from their point of view the communication testified to by Mr. Byron could not have occurred because the computer would have documented it if it did occur. Web Street also presented testimony to the effect that any effort on the part of Mr. Byron to place a limiting order prior to the point in time that his initial order was filled at 15:42:23 would have been rejected by the computer because there were no short positions until that time.

At first blush, there appears to be an irreconcilable conflict between the evidence presented by both sides. Moreover, it is tempting to conclude that there was most probably human error on the part of Mr. Byron in his effort to place the limiting order. However, such a conclusion would overlook a crucial factor in this case. The recorded telephone conversation between Mr. Byron and Mr. Graft which occurred at 3:52 makes reference to the phrase "no more business allowed" which Mr. Byron claims appeared upon his computer screen each time he attempted to place the four limiting orders. Furthermore, Mr. Byron's letter to Web Street dated January 26, 1999, also makes reference to the phrase "no more business allowed."

It is clear from the testimony in this case that Mr. Byron did not have access to the internal computer memoranda introduced at the hearing by Web Street until after Mr. Byron filed this arbitration claim. The only way he could possibly have known about that phrase was for it to have appeared on his computer screen when he attempted to place the four limiting orders as per his testimony. These circumstances create a very strong indication that the factor which actually frustrated Mr. Byron from placing his limiting order was a computer glitch. This concern is compounded by the fact that the computer precluded Mr. Byron from communicating effective limiting orders. The compelling questions are why the computer allowed him to place the short orders in the first place and why it rejected his follow-up

efforts to place a limiting order?

Unfortunately, insufficient evidence was presented for there to be an accurate determination of exactly what happened during the time that elapsed between 3:42 and 4:00 on the afternoon of January 22, 1999, but the evidence is sufficient to establish that it was a computer problem and not human error.

Once this conclusion is reached, it then becomes necessary to look to Web Street as the source of the problem. The question of whether or not there was any active negligence on the part of Web Street or whether the problem arose out of a programming glitch that Web Street was not previously aware of does not matter. Under the Florida securities laws, Web Street must bear the responsibility of providing a system by which a customer, once an order is placed, may place such follow-up orders as are necessary to carry out the customer's investment program. In this case, but for the failure on the part of the Web Street system to recognize and process Mr. Byron's order, no loss would have occurred. After all, it is Web Street that elected to approach its brokerage business through the use of computers and prides itself on being able to process trades on extremely short notice.

Web Street argued that it is extremely dangerous to set a precedent in which a party alleges that an investment transaction was made when there was no evidence to support the fact that the alleged computer transaction actually occurred. With this assertion, the Arbitrator is in total accord, but in this particular case the evidence forces the inescapable conclusion that Mr. Byron did in fact make contact with Web Street's computer when he said he did, and the Web Street computer response was faulty. In fact, the Arbitrator is forced to conclude that if Web Street's computers were working properly and consistent in this particular situation, the initial order placed by Mr. Byron should have been rejected as well.

The Claimant seeks damages for the price differential in the Yahoo stock which occurred between Friday afternoon when the short position was taken until Monday afternoon when Mr. Byron liquidated his position at a per share price of \$301.00. The Arbitrator does not concur with that position. While Web Street may have a responsibility to the customer to provide a glitch free order processing system, the customer is under a duty to mitigate his damages. When Mr. Byron realized on Monday morning that Web Street was not going to honor the transaction he believed he made on Friday afternoon, Mr. Byron should have liquidated his position at that time at a price of \$297.00 per share. Accordingly, the Arbitrator feels that Mr. Byron is entitled to recover \$22,000.00 plus prejudgment interest of \$4,039.00 through November 30, 2000 and \$6.03 per diem thereafter until the award is formally entered.

Inasmuch as the Claimant has sought and obtained relief under the Florida Securities Act, the Arbitrator recommends that reasonable attorney's fees be awarded the Claimant by the appropriate jurisdiction. The Arbitrator determines that forum fees should be paid equally by each side.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$150.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member ~~firm~~ is a party.

Member surcharge = \$600.00
Pre-hearing process fee = \$600.00
Hearing process fee = \$1,000.00

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with a single arbitrator x \$450.00 = \$450.00

Pre-hearing conference: May 9, 2000 1 session

Two Hearing sessions x \$450.00 = \$900.00

Hearing Date(s): November 28, 2000 2 sessions

Total Forum Fees = \$1,350.00

The Arbitrator has assessed \$675.00 of the forum fees to Claimant.

The Arbitrator has assessed \$675.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$150.00
Forum Fees	= \$675.00
Total Fees	= \$825.00
<u>Less payments</u>	<u>= \$750.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$75.00

Respondent be and hereby is solely liable for:

Member Fees	= \$2,200.00
Forum Fees	= \$675.00
Total Fees	= \$2,875.00
<u>Less payments</u>	<u>= \$2,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$675.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Arbitrator's Signature

/s/ David A. Townsend, Esq.

Public Arbitrator, Presiding Chair

Signature Date

January 4, 2001

Date of Service (For NASD-DR office use only)

Fee Summary

Claimant be and hereby is solely liable for:

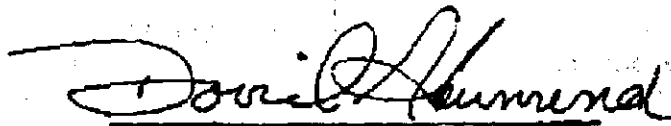
Initial Filing Fee	= \$150.00
Forum Fees	= \$675.00
Total Fee	= \$825.00
<u>Less payments</u>	<u>= \$750.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$75.00

Respondent be and hereby is solely liable for:

Member Fees	= \$2,200.00
Forum Fees	= \$675.00
Total Fees	= \$2,875.00
<u>Less payments</u>	<u>= \$2,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$675.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Arbitrator's Signature



David A. Townsend, Esq.
Public Arbitrator, Presiding Chair

Signature Date

1/4/01

David A. Townsend, Esq.
Public Arbitrator, Presiding Chair