

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION, INC.

CASE: 99-05124

American Fronteer Financial Corporation f/k/a RAF Financial Corporation, claimant vs. Ronald J. Zabriskie, respondent.

ATTORNEYS:

For Claimant appeared Carla B. Minckley, Esq. and Thomas D. Birge, Esq., of the firm Birge & Minckley, P.C., Denver, CO.

Respondent appeared Pro Se, Rockville, MD.

DATE FILED: November 15, 1999

CASE SUMMARY: Claimant alleged that respondent failed to reimburse them for monies credited to a customer's account by the claimant pursuant to respondent's employment contract, for losses incurred as a result of respondent's actions.

ARBITRATOR'S REPORT: The contractual indemnification provision in issue obligates Respondent to indemnify Claimant for losses "that arise by reason of," *inter alia*, Respondent's "failure to comply with instructions received [from his] clients" or "negligence in connection with handling [his] clients' accounts." In order to obtain indemnity for the settlement of a customer claim of failure to execute a sell order pursuant to the above-quoted provision, Claimant must establish that one of the pre-conditions to indemnification occurred, *i.e.*, that the Respondent failed to execute a sell order or was otherwise negligent.

Claimant has not carried its burden of proof on this issue. There is no sworn statement by the customer setting forth facts establishing a failure to execute a sell order or negligent handling of the customer's account. There is no sworn statement from the co-worker who allegedly heard the customer give a sell order. The customer merely made certain allegations via letter, which were fully addressed in a subsequent letter by Respondent. There is not even a follow-up letter from the customer reacting to the Respondent's written explanation of what occurred.

For the above-mentioned reasons, the claim is dismissed. The parties shall each bear their own filing fees and costs.

Claim Data

Claim: \$8,782.01
Interest: at 8%
Atty Fees: unspecified
Filing Fees: unspecified
Costs: unspecified
Other: unspecified

Award Data

Award: \$.00
Interest: \$.00
Atty Fees: \$.00
Filing Fees: \$.00
Costs: \$.00
Other: \$.00


AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All requests for interest are denied. 3) All requests for attorney fees are denied. 4) All other relief requests are denied. 5) The \$750.00 filing fee previously deposited with NASD Dispute Resolution, Inc. by the claimant, shall be retained by NASD Dispute Resolution, Inc.

OTHER FEES: Pursuant to Rule 10333 of the Code, claimant has paid to NASD Dispute Resolution, Inc. the \$300.00 Member Surcharge previously invoiced.

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AFFIRMATION

I, Ida Draim, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Ida Draim, Esq.

February 5, 2001
Date of award