

[Title]

Unauthorised trading of securities and client damage

[Deciding Court]

Supreme Court

[Date of Decision]

28 February 1992

[Case No.]

Case No. 386 (o) of 1988

[Case Name]

Claim for damages

[Source]

Hanji 1417, p. 64

[Parties]

Appellant: Dana Synge Baines (name to be confirmed)

versus

Appellee: The Nomura Securities Co., Ltd.

[Summary of Facts]

X (plaintiff, appellant, and final appellant) opened a credit trading account with Securities Company Y (defendant, appellee, and final appellee) on 8 February 1984. The following day (9 February) there was agreement concerning trading between X and Y to be conducted using the monthly reporting method prescribed in Art. 7 (1) (ii) of Y's safe custody contract. In addition, an application for safe custody pursuant to Y's general trading contract was made on 5 March. X frequently conducted credit transactions through this credit trading account until about February 1985. Employees of Y conducted unauthorised trading without orders from X for 14 transactions conducted during the period from 30 March to 17 October 1984. This resulted in Y deducting expenses such as commissions, interest, and trading losses totalling a little more than JPY 5.347 million from X's account, so X filed a claim for damages against Y based on default by Y.

First, Y disputed the claim that each transaction was based on the entrustment from X. In addition, Y asserted that even if there had been unauthorized transactions without entrustment, the lack of response from X to transaction reports and monthly reports sent by Y effectively meant there was ratification by X. Furthermore, Y also asserted that preparations were being made to compensate for losses on priority allocation of publicly issued shares for a certain amount (JPY 3.49 million).

In the first instance (Tokyo District Court, 3 January 1987, Hanji No. 1266, p. 111) 9 of the 14 transactions were found to be unauthorized transactions, stating “When the contract to open the (credit trading) account was executed Y should have been obligated to only use this account to settle transactions in accordance with X’s order.” The court found in favor of X’s claim for an amount of a little more than JPY 17.04 million, excluding the amount of compensation due to such transactions as publicly offered shares from the amount of loss caused by unauthorized transactions.

The original verdict (Tokyo High Court, 24 December 1987, Kinhan No. 893, p. 7) was “Transactions by Y where it used X’s name of its own accord without an order from X or X’s agent should not affect any ownership by X. Therefore, even if there is a paper loss, or recording of fees or other expenses, they have absolutely nothing to do with X, and are not X’s losses.” Consequently, all of this claim by X should be quashed, and while the original verdict that found in favour of part of X’s claims was unjust, there is no incidental appeal from Y so the verdict will be limited to dismissal of this appeal, and X’s appeal was dismissed.

X appealed against the original verdict citing unjust reasons and violation of precedents (Supreme Court, 15 October 1974, Kinpo No. 744, p.30)

[Summary of Decision]

Final appeal dismissed.

“Even if an employee of a securities company trades securities using a client’s credit trading account without the client’s order, and an amount of money equivalent to the resulting fees, interest and trading loss is deducted from the client’s credit trading account by way of accounting action, the effect of the unauthorized transactions does not belong to the client and such action has no impact on the client’s right to claim a refund of funds such as margin deposits and trading losses against the securities company, so the client cannot be found to have suffered damage of an equivalent amount of money.”