

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 02-06092

Malvin Gordon Johnson, Jr. and Dana Johnson, claimants vs. Trautman Wasserman & Company, Inc., respondent.

ATTORNEYS:

Claimants appeared pro se, Cedar Hill, TX.

For Respondent appeared Faun M. Phillipson, Esq., of the firm Winget, Spadafora & Swartzberg, LLP, New York, NY.

DATE FILED: October 11, 2002

CASE SUMMARY: Claimants alleged that respondent purchased and sold stock without their permission. Claimant maintained that because of respondent's actions, their account suffered a loss.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$25,000.00
Attorney Fees: \$789.67
Filing Fees: \$875.00

Award Data

Award: \$25,000.00
Attorney Fees: \$.00
Filing Fees: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the claimants \$25,000.00. 2) All requests for attorney fees are denied. 3) All other relief requests are denied. 4) The \$425.00 filing fee previously deposited with NASD Dispute Resolution by the claimant, shall be retained by NASD Dispute Resolution.

OTHER FEES: Pursuant to Rule 10333 of the Code, respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

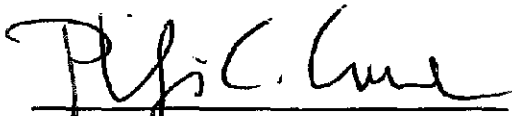
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Philip C. Crouse

Sole Public Arbitrator

AFFIRMATION

I, Philip C. Crouse, 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.


Philip C. Crouse


Signature Date

March 12, 2003
Date of Service (For NASD-DR office use only)

EXHIBIT A

NASD Award

In the Matter of the Arbitration Between:

Claimants: Malvin and Dana Johnson

Respondants: Trautman Wasserman & Company, Inc.

Case #02-06092

Representation

For Claimant: None noted

For Respondant: Winget, Spadafora & Schwartzberg, LLP, by Fawn M. Phillipson, Esq.
New York, NY

State of Texas, County of Dallas

I, Philip C. Crouse do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

February 21, 2003

Dated

Award of Arbitrator

I, Philip C. Crouse, having been designated in accordance with the Arbitration Agreement entered into between the above-named Parties, and having dully received the proofs and allegations of the Parties, do hereby, FIND, as follows:

- A. Unauthorized trades by a representative of Trautman Wasserman & Company, Inc. did occur, and remedy to the Claimants from Respondent is warranted because Broker Stephen K. Faber, an employee and representative for Trautman Wasserman & Company, Inc. executed an unauthorized trade. No credible evidence was given by Respondent to refute the assertion of the Claimants and action of the Claimants subsequent to the unauthorized trade support that the trade was unauthorized.

- B. The trade of United International Holdings (UIHIA/UCOMA) on February 4, 1999 was a legal trade and allowed by the Oppenheimer & Company, Inc. Client Agreement signed by Claimants, Exhibit "B", of the initial Claimants' Submission states clearly:

"Item 5: Oral Authorizations. I agree that you shall incur no liability in acting upon oral instructions given to you concerning my accounts, provided such instructions reasonably appear to be genuine."

"Item 8. Accuracy of Reports, Communications. Confirmation of order and statements of my accounts shall be conclusive and deemed correct if not objected to in writing, within ten (10) days, after receipt by me by mail or otherwise....."

"Item 11. Liquidation of Collateral or Account. You may sell any or all property held in any of my accounts and cancel any open orders for the purchase or sale of any property without notice in the event of my death or whenever in your discretion you consider it necessary for your protection. In such even you also may borrow or buy-in all property required to make delivery against any sale, including a short sale, effected for me. ..."

"Item 12. Loans. From time to time you may, at your discretion, make loans to me for any purpose, including the purpose of purchasing, carrying or trading in securities ("Margin Loans")...."

While evidence submitted indicates that the proper paperwork may not have followed the margin purchase, actions by the claimant indicate this action was agreed to with Mr. Farber. The claimants have the duty to understand the document they signed on October 22, 1997; and "ignorance" is no legal excuse. This arbitrator is very disturbed that Mr. Farber or the proper parties of the Respondent company should have followed up with the Claimants about how a margin account works and what the general risks are in the case of a loss or margin call. In addition, proper margin account paperwork should have been accomplished. If this was accomplished, no evidence was submitted by Respondent to verify this.

- C. The sale of 500 shares of United International Holdings on April 15, 1999 and the subsequent purchase of 3000 shares of Esynch without the Claimants' knowledge is valid. No evidence to the contrary has been given by Respondent. Merely the claim by respondent that the Claimants continued to own the stock does not negate the assertion of illegal transactions by Mr. Farber as the representative of the Respondent. Likewise the holding of the stock by the Claimants was done at claimants

own risk. The Claimants could have changed the positions as well as the brokerage firm at any time, without jeopardizing any claim. A claim to the contrary does not have merit. The statement of the Claimants "I left my account in tact because I thought that to be the prudent thing to do while I was pursuing my complaints against Mr. Faber and Trautman" was unfortunately an action taken by the Claimants. Claimants should have sought proper counsel and still made prudent decisions in regard to their investment portfolio.

- D. Respondent asserts that the claimants' claims are time-barred by virtue of the expiration of the applicable statutes of limitation. The statutes of limitation have not been exceeded, as NASD, the New York Stock Exchange, and the American Stock Exchange all prescribe a six-year limitation on arbitration of disputes. Therefore, the claim can be arbitrated.
- E. The Claimants seek damages of \$25,000, plus \$875.00 for filing fees, plus \$789.67 for legal fees. The Respondent request dismissing the Statement of Claim, imposing forum fees in their entirety upon the claimants, and other relief the arbitrator deems just and appropriate.
- F. I therefore Award as follows:
 - a. Within thirty (30) days form the date of transmittal of this Award, Trautman Wasserman & Company, Inc. shall pay jointly Malvin Gordon Johnson, Jr. and Dana Johnson (Claimants) the sum of \$25,000.
 - b. With respect to attorney fees, each party is responsible for fees incurred on their behalf.
 - c. With respect to filing fees, each part is responsible for fees incurred on their behalf.

Awarded this 21st day of February, 2003

By

Philip C. Crouse