

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Estate of S.C. Heitner, First National  
Bank of Evergreen Park, Administrator

Claimant

and

Newhard Cook & Co., Inc. and Jerry Stein

Respondents

CASE NO. 89-00103

CASE SUMMARY

In a claim filed with the NASD on or about January 16, 1989, Claimant, the Estate of Jeanette C. Heitner ("Estate") alleged that Respondent Jerry Stein ("Stein") made fraudulent statements regarding the nature of the investments made by Stein on behalf of the Estate. Additionally, the Estate alleged that the investments made by Stein on behalf of the Estate were grossly inappropriate and that Respondent Newhard Cook & Co., Inc. ("Newhard Cook") failed to properly supervise Stein. Stein and Newhard Cook also allegedly breached their fiduciary duties to the Estate by trading the Estates' accounts excessively and on margin. Some of the alleged unsuitable investments for the Estate involved the purchase of three over the counter stocks following the liquidation of approximately 90% of the Estate's holdings in Putnam Hi Income Trust.

Newhard Cook in it's Statement of Answer filed with NASD, denied any wrongdoing, denied any allegations of breach of fiduciary dates, denied any allegations of lack of sophistication of the Estate, its representatives or agents and denied that any of the transactions at Newhard were inappropriate. Additionally, Newhard Cook maintained that the account was established as a margin account at the express instructions of the administrators and/or agent of the estate. Newhard Cook also asserted certain affirmative defenses including but not limited to, estoppel, ratification and waiver.

Stein answered the claim with substantially the same defense set forth by Newhard Cook.

RELIEF REQUESTED

The Estate sought damages of \$142,350.00 inclusive of interest at 8% per annum and attorneys' fees.

Newhard Cook and Stein requested dismissal of the claim in its entirety plus an award of attorneys' fees and costs.

#### PROCEDURAL SUMMARY

Stein appeared at the initial hearing date of February 21, 1990 and requested a continuance in order to obtain counsel. The panel granted the continuance request. Additionally, Newhard Cook and the Estate reached a settlement of their portion of the dispute on the evening prior to the initial hearing date. Therefore, Newhard Cook was dismissed as a Respondent from this arbitration proceeding.

The panel ordered that the hearing be rescheduled as close to May 21, 1990 as possible. The date was set as May 22, 1990 and the parties were provided notice of the new date by Federal Express mailing on May 8, 1990. Stein did not appear at the hearing on May 22, 1990. The panel determined to proceed in his absence in accord with Section 29 of the NASD Code of Arbitration Procedure.

Since Stein answered the claim, appeared at the initial hearing and is obligated to arbitrate the instant dispute at the insistence of a public customer pursuant to Section 12 of the NASD Code of Arbitration Procedures, Stein will be bound by the panel's decision on all matters submitted for determination.

#### AWARD

On Wednesday, February 21, 1990 and Tuesday, May 22, in St. Louis, Missouri, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Darlene Donahue, Assistant Trust Officer and Joseph C. Fanelli, Senior Vice President and Trust Officer for First National Bank of Evergreen Park for Claimant, the Estate of J.C. Heitner and on April 6, 1989 and by James R. Hinsmann on behalf of Respondent Newhard Cook & Co., Inc. Respondent Jerry Stein did not execute a submission to arbitration but filed an answer to the claim and appeared at the initial hearing on February 21, 1990. Additionally, Stein is obligated to arbitrate this dispute at the insistence of a public customer pursuant to Section 12 of the NASD Code of Arbitration Procedure.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Jerry Stein is liable for and shall pay to Claimant the Estate of J.C. Heitner, inclusive of interest, the sum of Eighty Six Thousand Five Hundred Eighty Eight Dollars and Eighty Four Cents (\$86,588.84);
2. This sum awarded to the Estate shall be offset by the amount, if any, paid to the Estate by Newhard Cook following settlement of this portion of the dispute;
3. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter;

4. Stein is assessed and shall pay to the NASD the sum of \$100.00 pursuant to Section 30(b) as a consequence of his having received a continuance of the initial hearing date; and,
5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee previously deposited with the NASD by the Claimant, Estate of J.C. Heitner. No additional forum fees are assessed against any party to this proceeding.

By the Panel

Dated: June 21, 1990 /S/ Charles E. Jones  
Presiding Chair

Dated: June 25, 1990 /S/ Jack M. Chasnoff

Dated: June 21, 1990 /S/ Hugh V. Murray

Date Served: AUGUST 24, 1990