

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Jack & Janice Sundheim

89-02808

Name of Respondent(s)

Finnnet Securites  
Philip M. Georgeson  
Robert Young

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CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 11, 1989, Claimants Jack and Janice Sundheim alleged that Respondent Robert Young, while acting as an agent or employee of Power Securities Corporation and Respondent Finnnet Securities, engaged in the following acts:

1. Fraudulently induced Claimants to open an account, deposit monies and engage in penny stock trading by misrepresenting the profit potential and failing to disclose the risks involved in trading in penny stocks;
2. Breached the fiduciary duty owed to Claimants by making recommendations without knowledge or information of Claimants' financial situation or suitability;
3. Engaged in excessive activity in the account;
4. Charged unfair markups in securities by attaching prices not reasonably related to the current market price;
5. Failed to execute an order to liquidate the account; and,
6. Unlawfully sold unregistered securities to Claimants.

In addition, Claimants alleged that Respondents Philip M. Georgeson and Finnnet Securities are liable for failing to use reasonable care to obtain possession of Claimants' securities by transferring them from Power Securities in a reasonable and prompt manner and for failing to disclose to Claimants that they did not have possession of the securities when Claimants desired to liquidate the portfolio.

In a Statement of Answer filed with the NASD on February 16, 1990, Respondent Robert Young denied the allegations of wrongdoing, stating that Claimants were sophisticated investors; no price projections were made; no request was made to liquidate the account; the problem in transferring the account is solely the responsibility of Powers Securities or its clearing agent; he did not have control of the securities in the Powers account after he became associated with Respondent Finnet Securities; trading activity was not excessive; and that Claimants have failed to state a claim upon which relief can be granted.

In a Statement of Answer filed with the NASD on February 1, 1990, Respondents Philip M. Georgeson and Finnet Securities, Inc. denied the material allegations of the Statement of Claim, stating that a diligent attempt was made to transfer the account, but was not accomplished due to the fault of the delivering dealer which had control of the account. In addition, respondents did not represent that the transfer of the account was accomplished, but only that the broker transferred to Finnet.

#### RELIEF REQUESTED

Claimants Jack and Janice Sundheim requested entry of an award against Respondents in the amount of \$50,876.00 plus interest, exemplary damages, attorney's fees and costs.

Respondent Robert Young requested that the Panel deny the claim in its entirety, and award him his attorneys' fees and costs.

Respondents Finnet Securities, Inc. and Philip M. Georgeson requested that the Statement of Claim be dismissed and denied in its entirety.

#### OTHER ISSUES

On February 6, 1991, a pre-hearing conference was held telephonically with all parties and the arbitration panel to resolve outstanding discovery issues and Claimant's request for postponement of the February 11, 1991 hearing date. At the conclusion, the panel made certain determinations regarding discovery and denied the Claimant's request for postponement. Claimants filed a Motion to Reconsider the Request for Postponement which the panel reviewed and determined would be denied.

#### PROCEDURAL HISTORY

On February 11, 1991 in Denver, Colorado during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 20, 1989 by Claimants Jack and Janice Sundheim, on March 12, 1990 by Philip M. Georgeson on behalf of Respondent Finnet Securities, Inc., on March 12, 1990 by Respondent Philip M. Georgeson, and on February 15, 1990 by Respondent Robert Young.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

AWARD

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. The Statement of Claim is hereby dismissed and denied in its entirety;
2. Each party shall bear their own costs, including attorneys' fees, except for those specifically enumerated herein;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$150.00 filing fee and the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimants Jack and Janice Sundheim. Claimants Jack and Janice Sundheim are liable for and shall pay additional forum fees of \$1,150.00 to the NASD.

Dated:

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Timothy J. Flanagan, Esq.  
Presiding Chair

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Arnold Church

4/25/91  
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*Albert T. T. Cook, Jr.*  
Albert T. T. Cook, Jr.  
Industry Arbitrator

89-2908

AWARD

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. The Statement of Claim is hereby dismissed and denied in its entirety;
2. Each party shall bear their own costs, including attorneys' fees, except for those specifically enumerated herein;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$150.00 filing fee and the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimants Jack and Janice Sundheim. Claimants Jack and Janice Sundheim are liable for and shall pay additional forum fees of \$1,150.00 to the NASD.

Dated:

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4/22/91

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Albert T. T. Cook, Jr.  
Industry Arbitrator

AWARD

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. The Statement of Claim is hereby dismissed and denied in its entirety;
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3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$150.00 filing fee and the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimants Jack and Janice Sundheim. Claimants Jack and Janice Sundheim are liable for and shall pay additional forum fees of \$1,150.00 to the NASD.

Dated:

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U. T. Cook, Jr.

Albert T. T. Cook, Jr.  
Industry Arbitrator