

National Association of  
Securities Dealers, Inc.  
Suite 1680  
Three First National Plaza  
Chicago, IL 60602  
(312) 899-4440

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

D & S Investment Co., a partnership  
between Richard D. Slomkowski and  
Raymond Dykema

89-03347

Name of Respondent(s)

Shearson Lehman Hutton, Inc.  
John F. Noonan

CASE SUMMARY

In its Statement of Claim, received by the NASD on November 29, 1989 D & S Investment Company, a partnership between Richard D. Slomkowski and Raymond Dykema, ("Claimants") alleged that John F. Noonan, ("Noonan") a registered representative of Shearson, Lehman, Hutton, Inc. ("Shearson") (Shearson and Noonan are collectively referred to herein as "Respondents"), misrepresented to Mr. Slomkowski that his partner Mr. Dykema had authorized the sale of their UAL calls thereby inducing Mr. Slomkowski to approve of the sale, when in fact Mr. Dykema never had approved such sale. Claimants further alleged that the Respondents were liable to them for unauthorized trading, misrepresentation, negligence, common law fraud, violations of federal and state securities acts, Article III Sections 1 and 2 of the NASD Rules of Fair Practice, and breach of fiduciary duty and contract.

The Respondents denied the claims of the Claimants.

RELIEF REQUESTED

The Claimant requested compensatory damages in excess of \$273,000, punitive damages in the sum of \$200,000, attorneys fees, and interest. The Respondents requested that the claims of the Claimants be dismissed.

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PROCEDURAL MATTERS

The Respondents submitted documentation subsequent to the hearing. The panel refused such submission and directed the NASD staff counsel to send back to the Respondents their post hearing submission.

AWARD

On November 30, 1990 in Minneapolis, Minnesota during a hearing lasting a total of two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 2, 1989 by the Claimants.

The Respondents did not file with the NASD a properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

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. All the claims asserted by the Claimants against the Respondents are hereby dismissed.

2. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants and the Claimant shall pay an additional \$100.00 to the NASD as forum fees. The Respondent shall pay to the NASD \$850.00 as forum fees.

By the panel

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Douglas D. McFarland  
Presiding Chair

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
James H. Colburn

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Michael J. Madden  
Industry Arbitrator

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1. All the claims asserted by the Claimants against the Respondents are hereby dismissed.

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Dated: January 3, 1991 /S/ Douglas D. McFarland  
By the panel  
Douglas D. McFarland  
Presiding Chair

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
James H. Colburn

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Michael J. Madden  
Industry Arbitrator

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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. All the claims asserted by the Claimants against the Responder are hereby dismissed.

2. Pursuant to Section 43(c) of the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. shall retain the arbitration session deposit in the amount of \$750.00 previously deposited with the Claimants and the Claimant shall pay an additional \$100.00 to the NASD as forum fees. The Respondents shall pay to the NASD \$850.00 as forum fees.

By the panel

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Douglas D. McFarland  
Presiding Chair

Dated: 2 January 1991 /S/ James H. Colburn  
James H. Colburn

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Michael J. Madden  
Industry Arbitrator