

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James C. and Betty Dunn

90-00823

Name of Respondents

Newhard Cook & Co., Inc.  
Jerry Stein



REPRESENTATION

For Claimants: Jay E. Sushelsky, Esq. of St. Louis, Missouri.

For Respondent Newhard Cook & Co., Inc. : Terry Lister, Esq. and Joanne D. Martin, Esq. of Peper, Martin, Jensen, Maichel and Hetlage of St. Louis, Missouri.

For Respondent Jerry Stein: Jerry Stein appeared pro se.

CASE INFORMATION

Statement of Claim filed: March 19, 1990.

Claimant's Submission Agreement signed on: March 19, 1990.

Statement of Answer filed by Respondent, Newhard Cook & Co, Inc. on: May 25, 1990.

Respondent, Newhard Cook & Co, Inc.'s Submission Agreement signed on: April 20, 1990.

Respondent, Jerry Stein did not file an Answer or properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: August 1, 1991 for one session with the Chairman.

Hearing Date/Sessions: September 30, 1991 during a hearing lasting two sessions.

Hearing Location: St. Louis, Missouri.

### CASE SUMMARY

Claimants, James and Betty Dunn ("Claimants"), alleged that Respondent Jerry Stein ("Stein") during the period between November 12, 1986 and October 31, 1987 churned Claimant's securities brokerage account maintained with Respondent Newhard Cook & Co., Inc., ("Newhard Cook"), invested in six speculative call option transactions without the prior authorization of Claimants against the Claimant's express wishes and negligently placed Claimants in a margin account which was speculative and against the Claimant's express desires. Claimants also alleged that Stein made certain representations during the period between November 13, 1986 and October 31, 1987 which were untrue. Among the alleged representations, Stein stated that Claimants should ignore margin calls as these were not adversely affecting their accounts and that their assets were safe. Stein failed to state that portions of their account were invested in call options and instead stated that their account was maintained in high quality stocks and bonds which were not speculative in nature. Stein allegedly stated the principal of the account was safe and that the investment strategy Stein was following would provide them a return on their money without risk to their principal.

Respondent Newhard Cook denied the allegations and stated that Claimants executed an options agreement with Newhard Cook wherein the risks of trading options was fully disclosed to them. Newhard Cook asserted certain affirmative defenses including, but not limited to, estoppel, waiver, laches ratification, comparative or contributory negligence, the claim was barred by applicable statutes of limitation and that the claim failed to state a claim upon which relief could be granted.

Respondent Stein did not file an answer to the Claim.

### RELIEF REQUESTED

Claimants requested compensatory damages of \$144,000 plus costs of the arbitration.

Respondent Newhard Cook requested that the claim be dismissed on all counts and for a judgment of reasonable attorney's fees. Respondent Stein did not answer the claim and therefore had no prayer for relief.

### OTHER ISSUES CONSIDERED & DECIDED

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.

In addition, Claimants settled their claims against Respondent Newhard Cook prior to the hearing. Accordingly, the arbitrators only considered the dispute between Claimants and Respondent Stein. Since Stein did not file an Answer to the claim or a submission agreement, the panel determined that Stein would be bound by its decision because he was obligated to arbitrate the dispute pursuant to Section 12 of the NASD Code of Arbitration Procedure and because Stein appeared and testified at the hearing.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Stein is liable for and shall pay to Claimants the sum of Ten Thousand Dollars and No Cents (\$10,000.00); and,
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The National Association of Securities Dealers, Inc. (NASD) shall retain the \$200.00 claim filing fee and the hearing session deposit of \$550.00 previously paid to the NASD by Claimants. Claimants are assessed and shall pay to the NASD additional forum fees of \$200.00 Respondent Stein is assessed and shall pay to the NASD additional forum fees of \$750.00 and Respondent Newhard Cook is assessed and shall pay to the NASD forum fees in the amount of \$750.00. All additional Forum Fees are payable to the NASD.

Concurring Arbitrators' Signatures

Charles Clardy  
Charles Clardy, Esq.  
Chairman  
Public Arbitrator

22 Nov 1991  
Dated

\_\_\_\_\_  
M. Peter Lux  
Public Arbitrator

\_\_\_\_\_  
Dated

Dissenting Arbitrator's Signature

\_\_\_\_\_  
Latham G. Kays  
Industry Arbitrator

\_\_\_\_\_  
Dated

Date served by the NASD: \_\_\_\_\_

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James C. and Betty Dunn

90-00823 DISCIPLINARY REFERRAL

Name of Respondents

Newhard Cook & Co., Inc.  
Jerry Stein

The undersigned arbitrators believe that the conduct of Respondent Jerry Stein should be investigated insofar as testimony during the arbitration hearing held on September 30, 1991 revealed that Claimants loaned Respondent Stein \$10,000.00 in apparent violation of the NASD Rules of Fair Practice. The loan occurred on or about September 3, 1987 and was apparently repaid.

Charles Clardy  
Charles Clardy, Esq.  
Chairman, Public Arbitrator

Dated: 22 November 1991

M. Peter Lux  
Public Arbitrator

Dated: \_\_\_\_\_

Latham G. Kays  
Industry Arbitrator

Dated: \_\_\_\_\_

Date served by the NASD: \_\_\_\_\_

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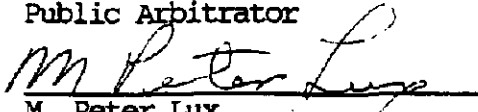
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Chairman  
Public Arbitrator

\_\_\_\_\_  
Dated

  
M. Peter Lux  
Public Arbitrator

11-21-91  
Dated

Dissenting Arbitrator's Signature

\_\_\_\_\_  
Latham G. Kays  
Industry Arbitrator

\_\_\_\_\_  
Dated

Date served by the NASD: \_\_\_\_\_

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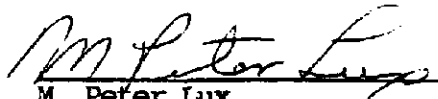
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\_\_\_\_\_  
Charles Clardy, Esq.  
Chairman, Public Arbitrator

Dated: \_\_\_\_\_

  
M. Peter Lux  
Public Arbitrator

Dated: 11-21-91

\_\_\_\_\_  
Latham G. Kays  
Industry Arbitrator

Dated: \_\_\_\_\_

Date served by the NASD: \_\_\_\_\_

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Charles Clardy, Esq.  
Chairman  
Public Arbitrator

\_\_\_\_\_  
Dated

\_\_\_\_\_  
M. Peter Lux  
Public Arbitrator

\_\_\_\_\_  
Dated

## Dissenting Arbitrator's Signature

\_\_\_\_\_  
Latham G. Kays  
Industry Arbitrator

\_\_\_\_\_  
Nov. 20, 1991  
Dated

Date served by the NASD: \_\_\_\_\_

N.A.S.D. AWAPD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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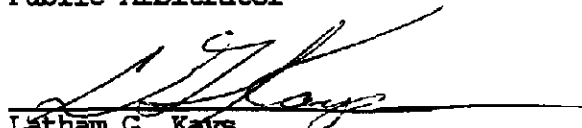
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\_\_\_\_\_  
Charles Clardy, Esq.  
Chairman, Public Arbitrator

Dated: \_\_\_\_\_

\_\_\_\_\_  
M. Peter Lux  
Public Arbitrator

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Latham G. Kays  
Industry Arbitrator

Dated: Apr 20, 1991

Date served by the NASD: \_\_\_\_\_