

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

E. Herbert Newman and John E. Newman

90-02412

Name of Respondent(s)

Jack Fernandez  
Boucher, Oehmke & Quinn  
Bryce Boucher  
Donald Oehmke

Heard before:

Robert Gleichenhaus, Esq.

Public

REPRESENTATION

Claimants were pro se. Respondent Jack Fernandez was pro se.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 30, 1990, in which the Claimants, E. Herbert Newman ("Herbert Newman") and John E. Newman ("John Newman"), alleged that the Respondent Jack Fernandez ("Fernandez") had made misleading statements concerning the financial stability of Health Care Products, Inc. ("Health Care"), that he failed to disclose the risks inherent in this investment, and as a result they had purchased stock in the company. Moreover, the Claimants alleged that Fernandez would not return their telephone calls for several weeks, and that they could not sell their stock before it had significantly declined in value. The Claimants also alleged that the Respondent Boucher, Oehmke & Quinn ("BOQ") failed to properly supervise the management of their accounts.

Fernandez denied the allegations made against him, and contended that the Claimants had purchased the stock in Health Care before he had ever spoken to Herbert Newman. Fernandez contended that he was never the Claimants' broker nor had he ever spoken to John Newman. Fernandez further contended that he merely sent the Claimants information about Health Care, and that the Claimants were fully aware of the risks involved and purchased the stock based upon the information they had read.

Respondents BOQ, Bryce Boucher and Donald Oehmke did not answer nor appear in this arbitration.

RELIEF REQUESTED

Claimants requested actual damages of approximately \$2,700.00. Respondent Jack Fernandez requested dismissal of all claims made against him, plus the costs associated with his defense, including, but not limited to, expenses for travel and attorney's fees.

AWARD

On June 3, 1991, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, E. Herbert Newman and John E. Newman on August 27, 1990, by Respondent Jack Fernandez on December 7, 1990, and not by Respondents Boucher, Oehmke & Quinn, Bryce Boucher and Donald Oehmke as is required by Section 12 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure ("Code"). The hearing was conducted in Buffalo, NY and consisted of one (1) hearing session. After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to Section 25 of the Code, the Respondents BOQ, Bryce Boucher and Donald Oehmke were served with a copy of the Statement of Claim, and afforded an opportunity to answer; none of the aforementioned Respondents filed an answer.
2. Pursuant to Sections 21 and 26 of the Code, Respondents BOQ, Bryce Boucher and Donald Oehmke were provided with the time, date and location of the hearing, as well as the name of the arbitrator and hearing procedures; none of the aforementioned Respondents appeared at the hearing nor requested an adjournment thereof.
3. In light of the foregoing, and in accordance with Section 29 of the Code and the by-laws of the NASD, the arbitrator determined to proceed with the arbitration of the controversy as if BOQ, Bryce Boucher, and Donald Oehmke had entered an appearance in the matter.
4. All claims asserted by Claimant John E. Newman be and hereby are dismissed in their entirety.
5. All claims against Respondents Bryce Boucher and Donald Oehmke be and hereby are dismissed in their entirety.
6. Respondent BOQ be and hereby is liable and shall pay to the Claimant E. Herbert Newman the sum of Four Hundred Fifty Dollars And No Cents (\$450.00), inclusive of interest.
7. Respondents BOQ and Fernandez be and hereby are jointly and severally liable and shall pay to the Claimant E. Herbert Newman the sum of Two Hundred

Fifty Dollars And No Cents (\$250.00), inclusive of interest.

8. The parties each shall their respective costs, including travel expenses and attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$50.00 filing fee previously deposited by the Claimants as the costs of the one (1) hearing session conducted in this matter. In addition, the Respondent BOQ be and hereby is liable and shall pay to the Claimants the sum of Fifty Dollars And No Cents (\$50.00) to offset the filing fee previously deposited by the Claimants.

Concurring Arbitrator Signature

  
Robert Gleichmanhaus, Esq.

Date of Decision: June 10, 1991

State of: New York

County of: ERIE

ss.:

On the 6<sup>th</sup> day, of June, 1991, before me personally appeared Robert Gleichenhaus to me known and known to me to be the person who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Janet M. Urbanczyk  
Notary Public

JANET M. URBANCZYK  
NOTARY PUBLIC, State of New York  
Qualified in Erie County  
My Commission Expires 1/30/92