



N.A.S.D. AWARD

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Jonathan S. and Elizabeth A. Spatz

90-02673

Name of Respondent(s)

InvestNet Corp.

Heard before:

Name

Public/Industry

Raymond M. Komichak, Esq.

Public/Chairman

REPRESENTATION

Claimants, Jonathan and Elizabeth Spatz were represented by: James R. Mall, Esq. of Meyer, Unkovic & Scott.
Respondent, InvestNet Corp. was represented by: Jack B. Cobetto, Esq. of Reed Smith, Shaw and McClay.

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on September 25, 1990. Claimants, alleged that Respondent, InvestNet Corporation, failed to forward in a timely fashion materials received from a tender offer relating to 1,500 shares of common stock of General Nutrition Corporation, Inc. ("GNC") held in street name by Respondent for Claimants' account with the result that Claimants were not made aware of the tender offer and did not tender their shares prior to the expiration date of the tender offer. Claimants asserted that Respondent's failure to forward tender offer materials in Respondent's possession constituted negligence and a breach of Respondent's fiduciary duty to Claimants.

AWARD-490-02673

In a Statement of Answer filed with the NASD on December 3, 1990 Respondent maintained that it offered "discount brokerage services" to Claimants, and that no fiduciary relationship existed between Respondent and Claimants. Respondent further maintained that it had no legal duty to forward tender offer materials to any of its clients or to solicit tenders pursuant to the tender offer for shares of GNC. Respondent asserted that, in any event, Claimants must have otherwise known of the tender offer for GNC shares and that Claimants bear sole responsibility for any consequences flowing from their failure to tender their GNC shares.

RELIEF REQUESTED

Claimants requested that an award be entered against Respondent requiring it to purchase the 1,500 shares of GNC stock held by Claimants at \$11.50 per share, plus interest from August 4, 1989 and reasonable counsel fees and expenses, or that they be awarded damages, interest, legal fees and expenses in the amount of \$22,868.09.

Respondent requested dismissal of the Claim or in the alternative that Claimants' damages be reduced to reflect Claimants' obligation to mitigate damages.

AWARD

On May 2, 1991, in Pittsburgh, PA, during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the Parties as set forth in submissions to arbitration signed by Claimants, Jonathan S. and Elizabeth A. Spatz on September 20, 1990 and by Respondent, InvestNet Corp. on November 30, 1990.

(The Parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the Parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.)

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. Respondent, InvestNet Corp., is hereby liable and shall pay to Claimants, Jonathan S. and Elizabeth A. Spatz the sum of Nine Thousand Two Hundred Forty-Four Dollars and Thirty Three Cents (\$9,244.33);
2. Claimants request for attorneys fees is hereby denied;
3. The Parties shall each bear their respective costs, including attorneys' fees;

-3-

NASD-490-02573

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$400.00 previously deposited by the Claimant;

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Respondent, InvestNet Corp., is assessed forum fees in the amount of \$600.00 \$300.00 of which represents the amount assessed for one of the two hearing session held on May 2, 1991 and the other \$300.00 represents the amount assessed for a pre-hearing telephone conference held on April 30, 1991.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator Concurring



Raymond M. Komichak

DATED BY NASD
JUNE 5, 1991

Date of Decision: _____