

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John B. Menzer

and

No. 90-03472

Name of Respondents

Michael A. Giordano
Anthony L. Havens

REPRESENTATION OF PARTIES

John B. Menzer appeared pro se.

Michael A. Giordano appeared pro se.

Anthony L. Havens failed to appear.

CASE INFORMATION

Statement of Claim filed: on or about December 7, 1990.

Claimant's Submission Agreement signed on: December 5, 1990 by:
John B. Menzer.

Statement of Answer filed by Respondent Michael A. Giordano on or
about: January 24, 1991.

Respondent Michael A. Giordano's Submission Agreement signed on:
January 21, 1991.

Respondent Anthony L. Havens' Statement of Answer filed: on or
about February 20, 1991.

Respondent Anthony L. Havens' Submission Agreement signed
February 14, 1991.

HEARING INFORMATION

Hearing date: December 13, 1991

Location: Chicago, Illinois

CASE SUMMARY

Claimant John B. Menzer ("Claimant") alleged excessive mark-up on stock purchased from representatives of Equities International Securities ("EIS"). Respondent Michael A. Giordano ("Giordano") was the broker involved, and Respondent Anthony L. Havens ("Havens") was the President of EIS.

Claimant alleged that on or about July 27, 1988, he purchased 3,000 shares of Top Sound International, Inc. ("TSI") at \$8.00 per share, which was the market price quoted by Giordano. Two days later, the stock was trading at \$4.50 per share. It was a pink sheet stock, and there was no way for Claimant to follow the price activity. Claimant further alleged that the market price on July 27, 1988 was \$4.50 per share.

In his Statement of Answer, Giordano denied Claimant's claims that Giordano had made excessive mark-ups for the aforementioned trade. Giordano further stated that the person liable for the excessive mark-ups was Havens and EIS, and not Giordano.

For his Statement of Answer, Havens denied any excessive mark-ups had been made. Havens further stated that TSI was very volatile both before and after Claimant's purchase on July 27, 1988, and that a marketmaker is never held to buying or selling at a price quoted on a pink sheet because of price movements in the market.

RELIEF REQUESTED

Claimant requested an award of damages in the amount of \$10,500, plus 28 months interest at 12% (\$2,940), for total damages of \$13,440.

Giordano requested that the claim against him be dismissed in its entirety.

Havens requested that the claim against him be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Anthony L. Havens failed to appear at the hearing. Respondent Anthony L. Havens has filed a Submission Agreement and Statement of Answer with the NASD on or about February 20, 1991. Pursuant to Section 12 of the Code of Arbitration Procedure, and having answered the claim, Respondent Anthony L. Havens is hereby bound by the determination of the arbitrator on all issues submitted.

After review of the file, recognition of the filing by Respondent Anthony L. Havens, and review of the notices of hearing that were sent on July 26, 1991, and November 14, 1991 by certified mail, the arbitrator allowed the hearing to proceed under Section 29 of the Code of Arbitration Procedure.

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 remain on file with the NASD.

AWARD

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

1. Claimant John B. Menzer's claim against Respondent Michael A. Giordano is hereby dismissed and denied; and
2. Respondent Anthony L. Havens failed to appear to present or rebut evidence. After hearing all of the evidence presented at the hearing, the chairman has found that Respondent Anthony L. Havens is liable for, and shall pay to Claimant John B. Menzer the sum of \$10,500.00, plus interest at the rate of seven (7) percent from the date of purchase through December 13, 1991.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing session X \$300.00 = \$300.00

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the NASD shall retain the filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by Claimant John B. Menzer.

Respondent Anthony L. Havens is liable for, and shall pay to Claimant John B. Menzer the sum of \$400.00 which constitutes Claimant's forum costs in this matter.

Dated:

December 16, 1991

Sheldon I. Saitlin
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Presiding Chair
Public Arbitrator