

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph R. Dicosola

90-03606

Name of Respondents

David A. Noyes & Company
Joseph Baba

REPRESENTATION

The Claimant, Joseph R. Dicosola, was represented by Mark S. Boyle, Esq. of Goldstein & Boyle, Ltd. of Chicago, IL.

The Respondent, David A. Noyes & Co., was represented by James J. Moylan, Esq. of Moylan & Associates of Chicago, IL.

The Respondent, Joseph S. Baba, was represented by Frederick R. Dempsey, Esq. of Laidley & Sutter of Libertyville, IL.

CASE INFORMATION

The Statement of Claim was filed on December 26, 1990.

The Claimant's Submission Agreement was signed on December 3, 1990.

The Respondent's, David A. Noyes & Co., Submission Agreement was signed on June 11, 1991.

The Respondent's, David A. Noyes & Co., Statement of Answer was filed on May 22, 1991.

The Respondent's, Joseph S. Baba, Submission Agreement was signed on August 15, 1991.

The Respondent's, Joseph S. Baba, Statement of Answer was filed on or about August 20, 1991.

HEARING INFORMATION

The pre-hearing conference was held on March 26, 1992 via telephone conference call with Arbitrator G. Gale Roberson, Jr., Esq. for one (1) hearing session.

The hearing was held on April 28, 1992 for two (2) sessions, April 29, 1992 for two (2) sessions and May 5, 1992 for three (3) sessions in Chicago, IL for a total of eight (8) hearing sessions.

CASE SUMMARY

Joseph R. Dicosola ("Claimant") alleged fraud, misrepresentation and deceptive practices, violations of Section (a) of the Securities Exchange Act of 1933, violations of Section 10 (b) of the Securities Exchange Act of 1934, violations of 15 U.S.C. Section 78j, violations of S.E.C. Rule 10b-5 by Respondents, David A. Noyes & Co. ("Noyes") and Joseph S. Baba ("Baba"), involving an investment of Med-U-Check purchased by the Claimant. The Claimant further alleged breach of fiduciary duty, failure to supervise and violations of Section 27 of the NASD Rules of Fair Practice by the Respondent, Noyes.

In their answer, Noyes denied all material allegations in the claim. In addition, with respect to the allegation of violations of Section 27 of the NASD Rules of Fair Practice, Noyes asserted that there is no private right of action for violation of a rule of a securities self-regulatory organization. Noyes asserted the following affirmative defenses:

1. The Complaint in Arbitration fails to state a claim upon which relief can be granted.
2. The Complaint in Arbitration is barred by the doctrines of ratification, estoppel and waiver.
3. The Complaint in Arbitration is barred by applicable Statutes of Limitations.
4. The Complaint in Arbitration is barred by the Claimant's contributory negligence.
5. Dicosola dealt directly with the principals of Med-U-Check, no transactions in such securities came through Dicosola's account at Noyes.

In his answer, Baba denied the allegations set forth in the Statement of Claim. In addition, Baba asserted the following affirmation defenses:

1. The Complaint in Arbitration fails to state a claim upon which relief can be granted.
2. The Complaint in Arbitration is barred by the doctrines of ratification, waiver and estoppel.
3. The Complaint in Arbitration is barred by applicable Statutes of Limitations.
4. The Complaint in Arbitration is barred by the Claimant's contributory negligence.
5. Dicosola communicated personally and directly with the principals of

Med-U-Chek, and continues to do so to this day, and no transactions in such securities came through Dicosola's account at Noyes.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$196,000.00 and punitive damages in the amount of \$384,000.00 plus costs and fees.

The Respondents requested that the claim be dismissed plus costs and attorney's fees.

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 original remains on file with the NASD.

On April 28, 1992, Claimant made a motion to join his parents as Claimants in this arbitration. After hearing argument from all parties and deliberation, the panel denied the motion.

AWARD

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

1. Respondent, David A. Noyes & Co., is liable for and shall pay to the Claimant, Joseph R. Dicosola, the sum of \$22,500.00.
2. Respondent, Joseph S. Baba, is liable for and shall pay to the Claimant, Joseph R. Dicosola, the sum of 16,000.00.
3. The Claimants request for punitive damages has been denied in its entirety.
4. Each party shall bear their own costs and attorneys' fees.
5. Respondents, David A. Noyes & Co. and Joseph S. Baba, are liable for all hearing session fees as set forth more fully below.

FORUM FEES

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

1 pre-hearing conference X \$300.00 = \$300.00
7 sessions X \$1,000.00 = \$7,000.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable fee of \$250.00 and shall refund the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$4,171.00 are assessed against Respondent David A. Noyes, Co. Additional forum fees in the amount of \$3,129.00 are assessed against Respondent Joseph S. Baba.

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

Concurring Arbitrators' Signatures

Name

Date of Signature

G. Gale Robison, Jr. /s/

June 22, 1992

G. Gale Roberson, Jr.

Chairperson/ Public Arbitrator

Jordan H. Bodenstein /s/

June 18, 1992

Jordan H. Bodenstein

Public Arbitrator

Ronald C. Peters /s/

June 18, 1992

Ronald C. Peters

Industry Arbitrator