

BOOK

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eli Arieli

Name of Respondent/Third Party Claimant

David A. Noyes & Company

No. 91-01141

Name of Third Party Respondent/Cross Claimant

Gregory J. Kuczora

REPRESENTATION OF PARTIES

For Claimant: Stanley Yaker, Esq., New York, New York.
Neither claimant, nor his counsel appeared at the hearing.

For Respondent/Third Party Claimant David A. Noyes & Company:
Robert L. Cram, Esq., General Counsel.

Respondent/Cross Claimant Gregory J. Kuczora appeared pro se.

CASE INFORMATION

Statement of Claim filed: May 9, 1991.

Claimant's Submission Agreement signed on: May 7, 1991.

Statement of Answer and Third Party Claim filed by Respondent, David A. Noyes & Company on: August 15, 1991.

Respondent David A. Noyes & Company's Submission Agreement signed on: August 13, 1991.

Third Party Answer and Cross Claim filed by Gregory J. Kuczora on: September 17, 1991.

Third Party Respondent/Cross Claimant Gregory J. Kuczora's Submission Agreement was not properly filed with the NASD.

Amended Answer, Third Party Claim and Answer to the Cross Claim
filed on: October 15, 1991.

HEARING INFORMATION

Hearing date: July 9, 1992. One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant, Eli Arieli ("Claimant") alleged that Gregory Kuczora ("Kuczora") made trades for Kuczora's account on January 17, 1991 in OEX 305 calls ("Calls"). Claimant also alleged that the rights to receive the profits from the Calls had been assigned to Claimant by Kuczora. Kuczora had been an employee of Respondent/Third Party Claimant David A. Noyes & Company ("DNC"). Lastly, Claimant alleged that DNC has refused to recognize the assignment, and has failed to pay the profits from the Calls to him.

In its Answer and Third Party Claim, DNC denied the allegations contained in the Statement of Claim. DNC further asserted that Kuczora knew that he could not pay for the trade. It was also alleged that Kuczora never owned the stock and could not assign the stock to Claimant. DNC further alleged that it had made demand for payment upon Kuczora in accordance with paragraph 9 of the Customer Agreement with DNC. Kuczora allegedly failed to meet his obligations thereunder. DNC also alleged that on January 21, 1991, Kuczora admitted to the invalid assignment to the Claimant, in a letter to management, and had demanded that payment of the profits from the aforementioned calls be paid directly to him. Lastly, DNC alleged that both Claimant and Kuczora had breached the warranties and representations contained in paragraph 19 of their separate Customer Agreements.

For his Answer to the Third Party Claim and his Cross Claim, Kuczora denied the allegations contained in the Third Party Claim. Kuczora alleged that the confirmations for the Calls were "detoured" by DNC, thus never giving him the opportunity to own the trade. Kuczora further alleged that DNC had no intention of allowing Kuczora to pay for the trade because the trade was in the house account instead of his own. Moreover, Kuczora alleged

that DNC did not adhere to the guarantee pay agreement that they entered into with Kuczora. Lastly, Kuczora alleged that DNC blatantly disregarded obligations they entered into for their own gain.

In its Answer and Amended Third Party Claim, DNC, in count I, set forth the arguments and defenses raised in its original Answer and Third Party Claim. In count II, DNC alleged that it had entered into a contractual financial arrangement with Kuczora. On October 19, 1990, Kuczora signed a Note in the principal amount of \$2,400.00, forgivable at \$200.00 per month. Kuczora terminated his employment with DNC in January of 1991. The balance due on the note is \$1,800.00, and has never been repaid. Lastly, DNC alleged that Kuczora acknowledged \$1,600.00 of the debt by letter on January 21, 1991. For count III, DNC alleged that Kuczora incurred a debt to DNC concerning a customer account of Barber. Kuczora allegedly admitted the \$1,800.00 debt in the aforementioned letter, and has failed to pay it despite the demands made by DNC.

For its Answer to the Cross Claim of Kuczora, DNC denied each and every material allegation contained therein.

RELIEF REQUESTED

Claimant requested an award of \$4,687.50 against DNC.

DNC requested that: Claimant's claim be dismissed; an award of damages to DNC against Kuczora in the amount of \$5,000.00; and that the panel assess reasonable forum fees and attorneys' fees, jointly and severally against both Claimant and Kuczora.

Kuczora requested that the Third Party Claim be dismissed, and that he be awarded \$5,000.00 against DNC.

In its Answer and Amended Third Party Claim, DNC requested in count one that Claimant's claim be dismissed, an award of \$5,000.00 against Kuczora, and an assessment of reasonable forum fees and attorneys' fees jointly and severally against Claimant and Kuczora. For count II, DNC requested an award against Kuczora in the amount of \$1,800.00 plus interest, costs and reasonable fees in pursuit of its claim against Kuczora. In

count III, DNC requested an award against Kuczora in the amount of \$1,800.00 plus interest, costs and reasonable fees in pursuing its claim against Kuczora.

In its Answer to the Cross Claim of Kuczora, DNC requested that Kuczora take nothing for his claim, and that an award assessing costs and reasonable compensation be entered against Kuczora.

OTHER ISSUES CONSIDERED & DECIDED

Respondent/Cross Claimant Gregory J. Kuczora did not file with the NASD a properly executed submission to arbitration pursuant to Section 8 of the Code and having answered the claim, appeared and testified at the hearing and therefore is bound by the determination of the undersigned arbitrator on all issues submitted.

On April 5, 1991, Claimant Eli Arieli requested that the hearing in this matter be held in New York. After review of the request and the pleadings by the Director of Arbitration, the Director ordered that the case be transferred to Chicago to be set for hearing.

On both November 11, 1991, and December 6, 1991, Claimant Eli Arieli again made requests to the NASD to transfer this arbitration to New York for hearing. After appointment of an arbitrator, and review of the Situs Motion and all responses, the undersigned arbitrator denied the Motion and ordered that the hearing proceed as scheduled in Chicago, Illinois.

On May 18, 1992, Third Party Respondent/Cross Claimant Gregory J. Kuczora filed a Motion to Dismiss with the NASD. After review of the Motion and all responses, the undersigned arbitrator ruled to deny the Motion and proceed with a hearing in this matter.

Claimant, Eli Arieli, failed to appear at the hearing. Upon review of the file, and representations made by respondent David A. Noyes & Company, the undersigned arbitrator determined that Claimant had received due notice of the hearing as required under Section 26 of the Code of Arbitration Procedure (the "Code") and that the arbitration of the matter would proceed pursuant to Section 29 of the Code. The Claimant has filed a Statement of Claim with the NASD, as well as a valid Submission to Arbitration, and shall be bound by the determination of the undersigned arbitrator on all issues submitted.

The parties present at the hearing agreed to waive any objection to the undersigned arbitrator's hearing an industry dispute, after they had previously accepted, on the record, Arbitrator Medow as the arbitrator for this matter.

Third Party Respondent/Cross Claimant Gregory J. Kuczora failed to remit the required filing fee and hearing session deposit required to have been made at the time of filing his Cross Claim. Third Party Claimant/Cross Respondent David A. Noyes & Company made a Motion to Dismiss the cross claim based on Sections 25 (b) (1) and 44 (a) of the Code. After hearing argument from all parties present at the hearing, and deliberation, Arbitrator Medow granted the Motion to Dismiss with leave for Gregory J. Kuczora to refile his claim.

Respondent/Third Party Claimant David A. Noyes & Company next moved for dismissal of Claimant, Eli Arieli's cause of action for failure to appear, and failure to prosecute. After hearing argument from all parties present at the hearing, and deliberation, the undersigned arbitrator granted the Motion to Dismiss claimant, Eli Arieli's claims against respondent/third party claimant David A. Noyes & Company.

The parties present at the hearing 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 remains 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, Eli Arieli's Statement of Claim is hereby denied and dismissed with prejudice for failure to appear at the hearing. Claimant, Eli Arieli was given adequate and timely notice of the hearing, and the hearing had been delayed in case the Claimant had been unavoidably detained. The hearing was adjourned at 3:45 p.m., and the Claimant neither appeared, nor gave notice and/or reasons for his failure to appear.

2. Third Party Respondent/Cross Claimant, Gregory J. Kuczora's Cross Claim is hereby denied and dismissed without

prejudice for failure to remit the required filing fee and hearing session deposit under Sections 25 (b) (1) and 44 (a) of the NASD Code of Arbitration Procedure.

Third Party Respondent Gregory J. Kuczora is liable for, and shall pay to third party claimant David A. Noyes & Company the sum of \$700.00, which reflects the offset of 1 months salary from those amounts due from third party respondent Gregory J. Kuczora, as satisfaction for its claims herein.

4. Each party shall bear their own costs of this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

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

1 hearing session X (100.00 for claim + \$300.00 for third party claim) = \$400.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$50.00, and shall retain the hearing session deposit in the amount of \$100.00 previously paid to the NASD by the claimant, Eli Arieli. The NASD shall refund to the Claimant the sum of \$125.00 which constitutes an over-payment of the hearing session deposit in this case.

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the respondent/third party claimant, David A. Noyes & Company.

Dated:

July 9, 1992

/s/Arthur Medow
Arthur Medow
Presiding Chair

Date of service by the NASD: _____