

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

James W. and Sandra J. Bumstead :

Claimants :

vs. :

G. K. Scott & Co., Inc. :

Respondent :
-----CASE #91-02771
AWARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 4, 1991, Claimants, James W. and Sandra J. Bumstead, who appeared Pro Se, alleged that the brokers and managers of Respondent G.K. Scott & Co., Inc., for the time period from February 1989 through December 1989, failed to exercise due care in the investment decisions made in their account, in addition to providing false and misleading information on securities. Claimant further alleged that their account with Respondent was set up as a short-term, above-average risk account in which options, listed and un-listed securities would be utilized as a means of generating above average returns at which time, Respondent's were instructed that all trades had to be approved by Claimants and no options should be purchased or sold unless there was at least one month remaining until expiration. Claimants contended that Respondent failed to confirm to the account guidelines established at the opening of the account and regularly traded in their account without their knowledge or consent in order to generate commissions. Claimants further contended Respondent consistently provided misleading information on securities in order to solicit business and allegedly conspired with other firms to manipulate prices on issues where they were principal market makers. Claimants asserted that Respondent fraudulently handled their account and Claimants have attempted to settle the matter with Respondent to no avail, therefore, Respondent is liable for losses in their account.

Respondent, G.K. Scott & Co., Inc., by and through Fred F. Cirillo, Compliance Officer, maintained that on January 25, 1989 Claimants, James W. and Sandra J. Bumstead opened an account with them and indicated that their investment objectives for long term growth and speculation with available risk capital of \$10,000.00

whereby Claimants executed an Option Agreement prior to any option transactions being processed. Respondent further maintained that on January 28, 1989, Claimants executed a client agreement form that specifically stated that..."Reports of the execution or orders and statements shall be conclusive of not object to in writing within five days and ten days respectively, after transmittal or otherwise." Respondent contended as specified in the client agreement, Claimants made no complaints either in writing or by telephone. Respondent further contended that all transactions executed were in fact with the knowledge and direction of the Claimants. Respondent asserted that many of the transactions in Claimants account clearly indicate that commissions were highly discounted at a discounted rate of 50% to 60% of their clearing agent, therefore, Claimants account was not traded for the purpose of generating commissions. Respondent further asserted that at all times Claimants' account was handled properly and in accordance with the rules and regulations promulgated by the NASD as well as with instructions received from the Claimants, therefore, Respondent denies any allegations of failure to supervise and denies any liability to Claimants losses.

RELIEF REQUESTED

Claimants, James W. and Sandra J. Bumstead requested \$5,921.05 in actual damages.

Respondent, G.K. Scott & Co., Inc. requested the claim be denied in its entirety and they be awarded costs of this proceeding.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Lydia O. Bishop, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 11, 1991 and by the Respondent on March 19, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants, James W. and Sandra J. Bumstead against Respondent, G.K. Scott & Co., Inc. are dismissed.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, James W. and Sandra J. Bumstead shall be retained by the NASD, Inc. Respondent, G.K. Scott & Co., Inc. is liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **LYDIA O. BISHOP**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Sydney D. Bishop
Signature of Arbitrator

DATE OF DECISION: August 25, 1992

STATE OF:

-New Jersey

BB :

COUNTY OF: Bergen

On this 20 day of August 1992, before me personally appeared Lydia O. Bishop to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Louise Kimball