

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joe R. & Margaret H. Dobson

92-00438

Name of Respondents

Choice Investments Inc.
Donald Itzen

REPRESENTATION

For Claimant: Joe R. Dobson and Margaret H. Dobson were represented by Terrence Kendall, Esq. of Kendall, Randle, Finch & Osborn, located in Austin, Texas.

For Respondents: Choice Investments Inc. was represented by James G. Kaighin of Choice Investments, Inc., Austin, Texas.

Donald A. Itzen appeared pro se.

CASE INFORMATION

Statement of Claim filed: February 5, 1992.

Claimants' Submission Agreement signed on: January 27, 1992.

Joint Statement of Answer filed by Respondents Choice Investments, Inc. and Donald A. Itzen on: March 16, 1992.

Respondent Choice Investment, Inc.'s Submission Agreement signed on: March 10, 1992 by James G. Kaighin, President, Choice Investments, Inc.

Respondent Donald A. Itzen's Submission Agreement signed on: March 10, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: October 16, 1992 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant(s), Joe R. and Margaret H. Dobson, ("Claimants") alleged Respondent Donald A. Itzen ("Itzen"), while employed by or acting as an agent for Choice Investments, Inc. ("Choice"), breached his specific instructions as to when

to sell particular stocks. Specifically, Claimants asserted that Respondents failed to comply with standing instructions to sell Healthcare International Inc. ("Healthcare") stock when it reached double the purchase price, as it did for a period of six days in June of 1991. In addition, Claimants alleged that Itzen had standing instructions to sell Furrs/Bishop's Incorporated series A convertible preferred shares ("Furrs") if it dropped 10 to 15% below what Claimants paid for the shares. When the drop occurred, Claimants claimed that they not only were not sold out, but were not informed of the drop in value. Lastly, Claimants contended that Respondents were grossly negligent in handling Claimants' portfolio and that they breached their fiduciary responsibilities.

Respondents Choice and Itzen denied the allegations contained in the Statement of Claim, alleging that the Dobsons did not avail themselves of a sell order on Healthcare and did not initiate discussions of a stop limit order on the Furrs. Respondents claimed that all of Claimants' allegations are based on falsehoods or upon a misunderstanding of what the broker's and customer's responsibilities are. Respondents further alleged that Claimants had many years experience in trading securities, including stocks. Respondents denied that Claimants instructed Itzen to sell the entire position of Healthcare when it reached double the purchase price. Respondents asserted that Claimant was reluctant or unable to make a selling decision and the possibility of tripling or even quadrupling his initial Healthcare investment caused him to wait. In regard to Furrs, Respondents denied Claimants ever instructed Itzen to sell the entire position when it dropped 10-15% below the price paid by Claimants. Respondents further stated that Claimants were fully aware of the risks and rewards of a Furrs investment as they had in their possession Furrs 1990 annual reports.

RELIEF REQUESTED

Claimants Joe R. Dobson and Margaret H. Dobson requested damages in the sum of \$23,063.58 plus damages for the loss of earnings on that sum since August of 1991.

Respondents Choice and Itzen requested that all the claims be dismissed.

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 originals remain on file with the NASD.

AWARD

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

1. The Statement of Claim filed by Claimants Joe R. Dobson and Margaret H. Dobson is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration,

including attorneys' fees, except for those specifically enumerated herein.

OTHER COSTS

The panel hereby directs that the adjournment fee of \$400.00 previously deposited with the NASD by Claimants Joe R. Dobson and Margaret H. Dobson be returned to the Claimants pursuant to Section 30(b) of the NASD Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$400.00 per session = \$800.00.

The National Association of Securities Dealers, Inc. shall retain the \$100.00 non-refundable claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimants Joe R. Dobson and Margaret H. Dobson. Respondents Choice Investments, Inc. and Donald A. Itzen are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$400.00.

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

CONCURRING ARBITRATORS' SIGNATURES

Dated:

s/s A. Ross Rommel, Jr., Esq.
A. Ross Rommel, Jr., Esq.
Public Arbitrator
Chairperson

12-04-92

s/s Gregor H. Riesser
Gregor H. Riesser
Public Arbitrator

12-05-92

s/s Ronald R. Simpson
Ronald R. Simpson
Industry Arbitrator

12-04-92

Date of Service on Parties: 12-11-92