

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**Name of Claimant**

The Richard A. Honquest Company  
Pension and Profit Sharing Trust

92-01516

**Name of Respondent**

David A. Noyes & Company

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**REPRESENTATION OF PARTIES**

For Claimant, The Richard A. Honquest Company, at the hearing: David J. Bressler, Esq. of Rooks, Pitts and Poust, Wheaton, Illinois.

For Respondent, David A. Noyes & Company: Robert L. Cram, Esq. of David A. Noyes & Company, Indianapolis, Indiana.

**CASE INFORMATION**

Statement of Claim filed on: April 30, 1992. Response to Motion For More Definite Statement of Claim filed on: October 2, 1992.

Claimants' Submission Agreement signed on: June 2, 1992 by Francis A. Heroux, as trustee, and on June 16, 1992 by Richard A. Honquest and Rachael A. Honquest, as trustees.

Statement of Answer/Motion For More Definite Statement of Claim filed by Respondent on: September 2, 1992. Respondent's Submission Agreement signed on: August 31, 1992.

**HEARING INFORMATION**

Prehearing conference: October 19, 1993 for one (1) session with the chairman.

Hearing dates: March 1, 1994 for two (2) sessions;  
May 3, 1994 for one (1) session;  
May 4, 1994 for two (2) sessions.

Hearing Location: Chicago, Illinois.

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### CASE SUMMARY

Claimant The Richard A. Honquest Company Pension and Profit Sharing Trust ("Claimant") alleged that Respondent David A. Noyes and Company ("Noyes") engaged in unauthorized trading, breached fiduciary duties, recommended unsuitable investments, and engaged in misrepresentation in connection with the purchase of securities: Pavichevich Brewing Company common stock, New England Video Limited Partnership, and Krupp Insured Mortgage Limited Partnership.

Respondent Noyes stated that the claim fails to specifically identify any statute, regulation or theory of agency which would fully allow respondent to identify affirmative defenses. Noyes, in its answer, denied the allegations set forth in the claim. Noyes set forth the following affirmative defenses in its answer: 1. Failure to State A Cause of Action; 2. Waiver and Estoppel; 3. Ratification; 4. Laches; 5. Statute of Limitations and 6. Good Faith, Lack of Participation.

Claimant, in its response to the Motion For More Definite Statement of Claim stated that there is no requirement in the NASD Code of Arbitration Procedure that claimant set forth in explicit detail each and every legal theory under which it seeks to proceed.

### RELIEF REQUESTED

Claimant originally requested damages in the amount of \$86,371.28, plus interest, costs, attorney's fees and commissions and for such other relief as this panel deems equitable and just. At the closing of the hearing, the claimant verbally requested the amount of \$103,439.00. Claimant also requested that respondent's Motion For a More Definite Statement of Claim be denied.

Respondent requested that the Statement of Claim be dismissed and that they be awarded their costs and attorney's fees.

### OTHER ISSUES CONSIDERED & DECIDED

By Order of the panel, the Respondent's Motion For More Definite Statement of Claim was denied prior to the hearing.

The parties have agreed that the Award in this matter may be executed by 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. Respondent David A. Noyes and Company, Inc. shall be and hereby is liable for, and shall pay to the Claimant, The Richard A. Honquest Company Pension and Profit Sharing Trust, the amount of Twenty One Thousand, Five Hundred Dollars and No Cents (\$21,500.00);

2. Claimant's request for interest is denied;

3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically addressed herein.

**FORUM FEES**

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

5 hearing sessions x \$750 = \$3750 plus one prehearing conference session x \$300 = \$4050 plus \$500 for the adjournment fee = \$4550 minus the claimant's hearing session deposit of \$500 = \$4050 total due.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150 and shall retain the hearing session deposit in the amount of \$500 previously paid to the NASD by claimant.

Claimant shall pay the amount of \$1775 for their share of the additional forum fees. Total due from Claimant: \$1775.

Respondent shall pay the amount of \$2275 for their share of the additional forum fees. Total due from Respondent: \$2275.

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

**By The Arbitration Panel:**

Dated:

6-1-94

s/s Stuart M. Widman, Esq.  
Stuart M. Widman, Esq.  
Presiding, Public Arbitrator

6-1-94

s/s Frana Daskal, Esq.  
Frana Daskal, Esq.  
Public Arbitrator

6-1-94

s/s Robert J. Uhe  
Robert J. Uhe  
Industry Arbitrator

Date Award Served By The NASD: 6-2-94