

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

George Weinstein

92-01637

Name of Respondents

Jeffrey Brooks Securities Inc.  
National Financial Services Corp.

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**REPRESENTATION**

The claimant George Weinstein, appeared at the hearing without counsel.

For Respondent, Jeffrey Brook Securities ("JBS") Barry Bohrer Esq. from the law firm of Morvillo Abramowitz Grand Iason et. al.

For Respondent National Financial Services Corp ("NFSC"), Michael G. Shannon, Esq. from the law firm of Summit Solomon & Feldesman.

**CASE INFORMATION**

Statement of Claim was filed on: May 8, 1992.

Claimant's Submission Agreement was signed on: May 8, 1992.

JBS's Statement of Answer was filed on: July 1, 1992.

JBS's Submission Agreement was signed on: June 3, 1992.

NFSC's Statement of Answer was filed on: July 1, 1992.

NFSC's Submission Agreement was signed on: June 30, 1992.

NFSC's cross-claim was filed on: July 1, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: March 30, 1992 - 2 sessions

*January 25, 1993 - 2 sessions*

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York City, New York.

### **CASE SUMMARY**

Claimant alleges that at the urging of JBS he purchased 2,000 shares of preferred stock of U.S. Alcohol Testing of America, Inc. ("USAL"). Claimant alleges that as the value of USAL subsequently began to fall, he called about USAL several times a week and was told by Jeffrey Brooks that his telephone calls were annoying and that his account was going to be closed. Claimant alleges that several days later he asked JBS to sell the USAL and deliver the proceeds whereupon claimant was told that the clearing broker NFSC, had already been instructed to sell the shares. Claimant further alleges that he also instructed NFSC to sell his shares and was told that instructions would only be taken from JBS. Claimant alleges, however, that the proceeds were never received. Claimant alleges that his shares were eventually sold with the intervention by the NASD; and that by this time the share price had fallen significantly.

JBS denies all allegations of claimant as misstatements of facts and contends that JBS sent a Western Union Telegram advising claimant that it could sell or transfer his USAL to wherever advised. JBS maintains that prior to sending this message, claimant did not request that the shares be sold. JBS maintains that claimant actually made a substantial profit on the shares of USAL purchased through JBS.

NFSC contends that even if each and every allegation contained in the Statement of Claim is true, pursuant to Section 16 of the NASD Code of Arbitration Procedure, NFSC can not be held liable for any losses incurred by claimant. NFSC requests that the claim against it be dismissed. NFSC maintains that it is simply the executing and clearing broker with respect to transactions and accounts introduced to it by JBS. Pursuant to its agreement, NFSC has no direct involvement in the selection of investments or the transmission of instructions between JBS' customers and JBS does not have any fiduciary relationship with claimant.

### **RELIEF REQUESTED**

Claimant request and award of \$17,200.00 which represents the difference between his initial investment less commissions and the amount ultimately received. Additionally, claimant requests an award of punitive damages.

Respondents request that all claims against them be dismissed. NFSC request relief against JBS for all expenses associated with the hearing and for indemnification.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

NFSC made a motion by letter dated January 6, 1993 for dismissal of all claims against it. The claimant responded to the motion in a letter dated January 19, 1993 in which he objected to the granting of the motion. The arbitrator denied and reserved judgment on the motion until after the hearing.

The claimant requested that either Mr. Brooks Marten or another employee of NFSC who is familiar with NFSC's operations be present at the hearing. NFSC objected to this request. The arbitrator granted claimant's motion to have Brooks Marsten appear at the hearing in person. Mr. Marsten failed to appear.

#### 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. The claimant's claim is denied in its entirety.
2. NFSC's cross claim against JBS for costs and indemnification is denied.

#### FORUM FEES

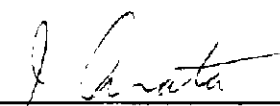
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. Claimant is assessed \$100.00 non-refundable filing fee.
2. Respondent NFSC is assessed \$500.00 non-refundable filing fee for the crossclaim. Respondent paid \$800.00 and is entitled to a refund of \$300.00.
3. Claimant is further assessed \$1,200.00 for the four hearing sessions. Claimant deposited \$400.00 and shall satisfy the assessment by reimbursing Respondent \$300.00 and paying \$600.00 to the NASD.

#### ARBITRATION PANEL

Name

Public/Industry

  
\_\_\_\_\_  
Joseph J. Arata, Esq.

Public

Date of Decision: June 21, 1993

STATE OF *New York*  
COUNTY OF *New York*

S.S.:

On this *21* day of *June*, 1993, before me personally appeared Joseph J. Arata, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he/she executed the same

*Mark O. Glut*

MARK O. GLUT  
Notary Public, State of New York  
No. 4085198  
Qualified in Queens County  
Commission Expires April 20, 1994