

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Dave and Nellie Zack

92-02923

Name of Respondents

Scottsdale Securities, Inc.;
Rodger Riney

REPRESENTATION

For Claimants: Dave Zack and Nellie Zack appeared pro se.

For Respondents: Scottsdale Securities, Inc. and Rodger O. Riney were represented by Rodger O. Riney, Scottsdale Securities Inc.

CASE INFORMATION

Statement of Claim filed: August 31, 1992.

Claimant's Submission Agreement signed on: August 21, 1992.

Statement of Answer filed: October 13, 1992.

Respondent Scottsdale Securities, Inc.'s Submission Agreement signed: October 12, 1992 by Rodger O. Riney, President, Scottsdale Securities, Inc.

Respondent Rodger O. Riney's Submission Agreement signed: October 12, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None held.

Hearing Date/Sessions: February 23, 1993 for one (1) session.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimants Dave Zack and Nellie Zack alleged that Respondents Scottsdale Securities, Inc. ("Scottsdale") and Rodger O. Riney ("Riney") incorrectly purchased 1600 shares of Score for Atlantic Richfield Stock ("R.F.S.") after Mr. Zack had placed a "sell" order, transferred the shares from the Zack's account without his permission, sold them, and retained the profit in Scottsdale's account. The Zacks specifically alleged that:

1. On April 3, 1992, Mr. Zack placed an order with Scottsdale to sell 1600 shares of RFS he owned at the market price;
2. On April 6, 1992, at approximately 8:45 a.m., Mr. Zack called about this order and was told that he had placed a buy order for 1600 shares of RFS at 7/8. After discussing the matter, he was quoted a bid of 1 and an ask of 1 5/16. Mr. Zack placed an order to sell the original shares at 1-1/4 and understood that he could call later to discuss the April 3 purchase of RFS;
3. Less than one hour later, Mr. Zack called back to tell Scottsdale he would accept the purchase, but was told that the stock had been transferred from his account. The bid at the time was 2 1/8;
4. Scottsdale sold the shares and transferred the net profit to their account; and
5. The hasty disposition of the trade deprived the Zacks of a profit which was unfair when the Zacks would have been held liable if there had been a loss.

Respondents Scottsdale and Riney denied the material allegations of the Statement of Claim, alleging that:

1. On Friday, April 3, 1993 at 9:30 a.m. St. Louis time, Mr. Zack placed a good-till-canceled order to buy 1,600 shares of R.F.S. at a limit of 7/8. The order was filled by 10:19 a.m. and a message was left on the Zacks' answering machine;
2. Mr. Zack called the morning of Monday, April 6, 1992 and denied placing a buy order, claiming it was a sell order;
3. Scottsdale had broken trades made by Mr. Zack several times before because he claimed to have not placed trades or differed some way with the terms of his orders. As a result, Riney instructed the broker to cancel the buy trade out of the Zacks' account into Scottsdale's error account and to not accept another buy order

from him:

4. The 1600 shares of RFS were immediately sold for $1\frac{1}{8}$, $\frac{1}{4}$ point higher than the $\frac{7}{8}$ purchase price;
5. Approximately one hour later, Mr. Zack called to accept the buy at $\frac{7}{8}$, but was told the trade had been canceled and that no further buy orders would be accepted until he could transfer his account to another broker;
6. Mr. Zack then decided to sell his 1600 shares of RFS for $1\frac{1}{4}$ at 10:15 a.m. St. Louis time, $\frac{3}{8}$ higher than if his original order was a sale as intended; and
7. At no time during the discussions with Mr. Zack was RFS trading at $2\frac{1}{8}$, and the highest he could have received up to that time was $1\frac{1}{4}$.

RELIEF REQUESTED

Dave Zack and Nellie Zack requested that the Arbitrator enter an award against Respondents for \$1,900.00, representing 1600 shares of RFS bought at $\frac{7}{8}$ and sold at a minimum of $2\frac{1}{8}$ less an allowance of \$100.00 for commission.

Scottsdale Securities Inc. and Rodger O. Riney did not specify relief in the Statement of Answer, but requested at the hearing that the claim be dismissed and denied.

AWARD

After considering the pleading, 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 Statement of Claim is dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee are assessed: One (1) hearing session x \$25.00 = \$25.00.

The National Association of Securities Dealers, Inc. shall retain the \$25.00 claim filing fee and refund the \$25.00 hearing session deposit previously deposited by the Claimants, Dave Zack and Nellie Zack. Respondents Scottsdale Securities, Inc. and Rodger O. Riney are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$25.00.

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

Arbitrator's Signature

Name

Date

Charles A. Seigel, III, Esq.
Charles A. Seigel, III, Esq.

June 1, 1993

Date of Service on Parties: 6/4/93