

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Patrick & Jody Bernardo

92-03418

Name of Respondents

Mathews Holmquest & Associates
Mary Martha (Cory) Adams

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 8, 1992, Claimants Patrick & Jody Bernardo by and through their counsel Steven C. Davidson, Esq. of Jeffrey D. Grant & Associates, Mamaroneck, New York alleged that on February 3, 1992 Claimant Patrick Bernardo contacted Respondent Mary Martha (Cory) Adams, employee of Respondent Mathews Holmquest & Associates to advise her that she was no longer authorized to make trades on Claimants' behalf and that they wished to close out the account, whereby Respondent Mary Martha (Cory) Adams sought to dissuade Claimants from closing out their account or at least tried to delay the closing of the account at least to the "end of the week". Claimants further alleged that they later told Respondent Mary Martha (Cory) Adams that they still wanted to close the account but would wait till February 7, 1992, whereby they further relied on Respondent Mary Martha (Cory) Adams representations that she would close out the account immediately and return to Claimants the proceeds of the account. Claimants contended that although Claimant Patrick Bernardo spoke with Respondent Mary Martha (Cory) Adams several times during the week of February 10, 1992 he never rescinded nor altered Claimants' express instructions to return the funds, whereby during those phone calls Respondent Mary Martha (Cory) Adams repeatedly sought to dissuade Claimants from closing the account by suggesting certain transactions which she promised would yield tremendous results. Claimants further contended that Respondent Mary Martha (Cory) Adams made unauthorized trades in their account after Claimants requested the account be closed, as well as "churning" the account. Claimants asserted that because of Respondent Mary Martha (Cory) Adams unethical and illegal conduct, in addition to Respondent Mathews, Holmquest & Associates' failure to supervise, they sustained losses in their account.

Respondent Mathews, Holmquest & Associates by and through their Compliance Officer, Mark

Regnier. maintained that Claimants Patrick & Jody Bernardo by and through Claimant Patrick Bernard initially stated that it was his intention to withdraw funds from the account; however, through Claimants' Statement of Claim, they now state it was their intention to close the account. Respondent Mathews Holmquest & Associates further maintained that Claimants agreed to purchase Ultimap Corp. stock on February 7, 1992 which was after the alleged unauthorized transactions; thus, Claimants' agreement on the purchase of Ultimap is inconsistent with their statements which clearly show Claimants did not instruct Respondent Mary Martha (Cory) Adams to close their account. Respondent Mathews Holmquest & Associates contended that Claimants through their Statement of Claim stated that the phone log conversations during the period in question were made to dissuade Claimants from closing their account when in fact those phone logs show a direct relationship to trade being executed. Respondent Mathews Holmquest & Associates further contended that their conduct was not unethical or illegal, and Claimants were not harmed by them.

Respondent Mary Martha (Cory) Adams by and through her counsel, Scott E. Richter, Esq. of Popham Haik Schnobrich & Kaufman Ltd., Minneapolis, Minnesota maintained that at no time during the events of February 10, 1992 did Claimants instruct Respondent Mary Martha (Cory) Adams to close their account; to the contrary, Claimants directly authorized all of the transactions that took place that week. Respondent Mary Martha (Cory) Adams further maintained that on February 3, 1992 Claimants placed an order to purchase Innovet, Inc., and later discussed Continental stock which was declining, thus Claimants and Respondent Mary Martha (Cory) Adams agreed if the Innovet, Inc. stock was profitable they would sell that position and get back to Continental. Respondent Mary Martha (Cory) Adams contended that on February 5, 1992 Claimants told her to sell Innovet, Inc. at $4\frac{3}{4}$ and buy Continental if it was \$1.30 or less at which time, they instructed her to sell Continental if the price went up to \$2.00 or down to 50¢ per share, whereby she tried to reach Claimant to inform them on February 7, 1992, she advised them of the trade and Claimants wanted to cancel the entire purchase and sale. Respondent Mary Martha (Cory) Adams further contended that she spoke to Claimants later that day to suggest Ultimap stock which they agreed to purchase and after confirmations Claimants told her they never placed the order.

RELIEF REQUESTED

Claimants Patrick & Jody Bernardo requested \$8,000.00 in actual damages plus interest and costs, including attorney's fees.

Respondent Mathews Holmquest & Associates requested the claim be denied and they be awarded costs.

Respondent Mary Martha (Cory) Adams requested the claim be denied and she be awarded costs.

AWARD

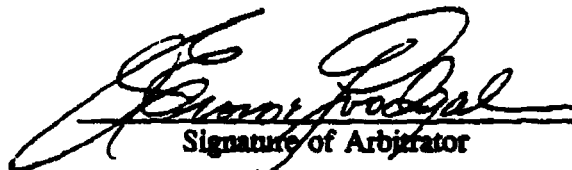
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 22, 1992, by the Respondent Mathews Holmquest & Associates on December 11, 1992 and by the Respondent Mary Martha (Cory) Adams on December 11, 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. Respondents Mathews Holmquest & Associates, Inc. and Mary Martha (Cory) Adams are jointly and severally liable and shall pay to the Claimants Patrick & Jody Bernardo the sum of \$1,000.00 in damages.
2. The Claimants request for interest is denied.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Patrick & Jody Bernardo shall be retained by the NASD. Respondents Mathews Holmquest & Associates and Mary Martha (Cory) Adams are jointly and severally liable and shall pay to the Claimants the sum of \$150.00, as reimbursement.

AFFIRMATION

I, Jerome Goodgal, 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.


Signature of Arbitrator

Date of Decision: May 18, 1993