

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

David S. Deskins

NASD Arbitration  
No. 93-00584

Name of Respondent(s)

U.S. Securities Clearing Corp.  
Thomas W. Granvold

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REPRESENTATION

For Claimant: David S. Deskins, Tacoma, Washington

For Respondents: A. James Miranti, Esq., U.S. Securities Clearing Corp., San Diego, California

CASE INFORMATION

Statement of Claim filed: February 16, 1993

Claimant's Submission Agreement signed: February 8, 1993

Joint Statement of Answer filed by Respondents:

Respondents' Submission Agreements signed as follows:

U.S. Securities Clearing Corp.: April 5, 1993

Thomas W. Granvold: July 8, 1993

HEARING INFORMATION

Pre-Hearing Conference Date/Session: None

Hearing Date/Sessions: October 20, 1993 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged unauthorized trading regarding the sale of 1,660 shares of Costco Wholesale Corp. purchased at 26-3/4 and sold at 24.

Respondents denied Claimant's allegations and alleged that in selling the stock at issue, Respondent Granvold was acting in accordance with Claimant's instructions. Respondents also asserted affirmative defenses.

#### RELIEF REQUESTED

At hearing, Claimant requested \$10,896.00 as an award against Respondents, inclusive of compensatory damages, attorney's fees, filing fees, interest and costs.

Respondents requested dismissal of Claimant's claims, attorney's fees, costs and such other and further relief as the arbitrator deems appropriate.

#### OTHER ISSUES CONSIDERED AND DECIDED

None.

#### 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. All claims by Claimant are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$100.00 hearing session deposit previously deposited by the Claimant. No additional forum fees are assessed.

#### STATEMENT OF REASONS

The undersigned arbitrator found that Claimant Deskins was an active trader who obviously relied on precise timing for his purchases and sales of securities. The arbitrator found that in the transactions prior to the Costco Wholesale sale at issue in the Statement of Claim, Deskins and Respondent Granvold established a course of dealing whereby Granvold executed transactions on behalf of Deskins when the securities at issue reached particular price levels, in full accordance with Deskins' instructions which had been issued not contemporaneously but rather in earlier telephone conversations. While there was conflicting testimony as to Deskins' reactions to these previous trades, there is no question but that

he continued to utilize Granvold as his broker throughout this period and thereafter, presumably because he was either satisfied with the results or not so dissatisfied that he was willing to break off a profitable relationship. Deskins could have utilized Granvold in a different manner, or he could have broken off the broker-client relationship if he was displeased with the course of dealing they had established, but he did not.

The undersigned arbitrator further found regarding the transaction at issue in the Statement of Claim, the sale of 1,660 shares of Costco Wholesale, that Deskins' instructions to Granvold were unclear and lacking in precision. The testimony is convincing that Deskins' directions during the critical telephone conversation were fraught with ambiguity and thus unclear in their ultimate import. In fact, Deskins acknowledges asking for Granvold's "leadership and guidance" as to the Costco stock. This is a practice which Deskins readily admits he followed in the earlier transactions. In selling the Costco shares when and at the price level he did, because of the imprecision inherent in Deskins' instructions, Granvold reasonably believed that he was acting in full accordance with his client's previously-issued instructions and pursuant to the course of dealing that the two had established. For this reason, Granvold was justified in his belief as to Deskins' intentions.

In addition, Claimant presented no evidence as to why Granvold would have executed an unauthorized trade for the Costco shares. Independently, the arbitrator discerned no credible motive that Granvold might have had for not adhering to what he believed his client's instructions to be.

Accordingly, the undersigned arbitrator found no unauthorized trading by Granvold and his employer U.S. Securities Clearing Corp.

#### ARBITRATOR

Name \_\_\_\_\_ Public / Industry

Harry E. Jennings, Jr., Esq.

Concurring Arbitrator's Signature

Harry E. Jennings, Jr.

Harry E. Jennings, Jr., Esq.

Date of Decision: Nov. 26, 1993

SERVED: 12/17/93