

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Kessler Asher Clearing, Inc.

93-01483

Name of Respondents

Jeffrey Brooks Securities, Inc.  
National Financial Services  
Jeffrey Brooks

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 14, 1993, Claimant Kessler Asher Clearing, Inc., through its representative Tim Vincent, Senior V.P., Chicago, IL, alleged that Respondents Jeffrey Brooks and Jeffrey Brooks Securities, Inc. has failed to pay to it fees that were assessed in connection with OEX Options executions cleared through the Claimant. The Claimant also alleged that during the period from April 1992 through September 1992 Respondent Jeffrey Brooks executed OEX Options which resulted in Clearing Member Trade Assignment Agreement fees that are due to Claimant, and further that Respondent National Financial Services, which is the clearing firm for Jeffrey Brooks Securities, Inc. is liable to Claimant for the entire amount of charges outstanding. Claimant Kessler Asher Clearing, Inc. contended that pursuant to the terms of the CMTA which Respondent National Financial Services entered into with Claimant and by accepting the OEX contracts, this Respondent agreed to be ultimately responsible for the outstanding charges, and therefore the Claimant should be compensated for the debt that remains.

Respondents Jeffrey Brooks Securities, Inc. and Jeffrey Brooks, through outside counsel Michael Dinkes, Esq., Greenvale, NY, maintained that they deny that the agreement was exclusive of CMTA and CBOE costs, but rather that the fee structure agreed to was all inclusive and included all fees including CMTA and CBOE fees which would be payable. The Respondents further maintained that although trades did take place until September of 1992, they ceased executing trades when they were notified of the additional, undisclosed fees. Respondents Jeffrey Brooks Securities, Inc. and Jeffrey Brooks acknowledged that all fees that were agreed upon were paid, and that therefore the claims should be denied.

Respondent National Financial Services, through in-house counsel Kenneth J. McDonald, Esq., Boston, MA, maintained that it has no liability or obligation to pay Claimant any amount over and above the amount paid by Respondent Brooks in accordance with his understanding of the terms of the agreement between Brooks and the CBOE floor trader, Jack Fahey, and further that the Claimant has no basis for the claim against it, and therefore the claim should be dismissed.

### **RELIEF REQUESTED**

Claimant Kessler Asher Clearing, Inc. requested \$2,527.24 in actual damages, plus costs.

Respondents Jeffrey Brooks Securities, Inc. and Jeffrey Brooks requested that the claims of the Claimant be dismissed, and it be awarded attorney's fees of \$5,000.00.

Respondent National Financial Services requested the claims of the Claimant be dismissed, and that it be awarded costs and attorneys fees.

### **AWARD**

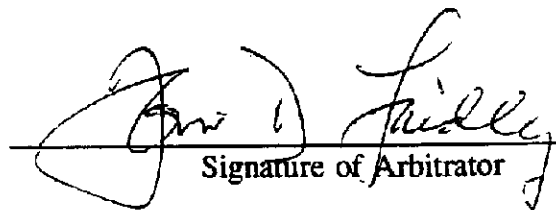
Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Forrest D. Laidley, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 6, 1993, by the Respondent National Financial Services on June 14, 1993, by the Respondent Jeffrey Brooks Securities, Inc. on August 3, 1993, but not signed by the Respondent Jeffrey Brooks as an individual as required by Sections 8 & 10 of the NASD Code of Arbitration Procedure.

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 Jeffrey Brooks Securities, Inc., Jeffrey Brooks and National Financial Services are jointly and severally liable and shall pay to Claimant Kessler Asher Clearing, Inc. \$2,257.54 in actual damages.
2. The parties shall bear their respective costs.
3. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **FORREST D. LAIDLEY, ESQ.**, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:** August 31, 1994