

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Corby Sable

93-01769

Name of Respondent

Ohio Savings Securities, Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on May 3, 1993, Claimant Corby Sable by and through his counsel Lawrence J. Rich, Esq. of Zashin, Rich & Sutula Co., L.P.A., Cleveland, OH, alleged that he placed an order with Respondent Ohio Savings Securities, Inc. on November 15, 1990 to purchase 350 shares of A.M.D. Preferred Stock at 14 3/4. Claimant further alleged that Respondent never executed the order and the stock closed at 14 3/4 on November 27, 1990, at which time, the Claimant was never notified that the stock was not purchased on that day. Claimant contended that Respondent never executed the order and canceled the order on March 1, 1991 whereby the stock has gone up in value. Claimant further contended that he contacted Respondent to inquire as to why to stock was not purchased and it was three to four weeks before Respondent by and through Shelly Vasa returned his phone call. Claimant asserted that he is not a professional trader whereby he relied on the services of Respondent, thus they are liable for his losses.

Respondent Ohio Savings Securities, Inc. by and through their in-house counsel Roy E. Lachman, Esq., maintained that Claimant Corby Sable placed an order with them on November 16, 1990 to purchase 350 shares of AMD Preferred Stock at 14 3/4 and admit they did not execute the order because they are a broker, not a specialist or floor broker who executes orders; however, they did place the order with the New York Stock Exchange ("NYSE"). Respondent further maintained that they notified Claimant on his monthly statements for November and December, 1990 that he had not purchased the stock, and further notified Claimant on November 26, 1990 that Claimant's bid had been reduced due to an "ex-dividend". Respondent contended that the reason they did not execute Claimant's order was that they were not a specialist or floor broker that executes orders; it only placed them; and pursuant to NYSE

rules the price bid by Claimant for the stock had been adjusted by the specialist when it traded "ex-dividend" on November 26, 1990 whereby Respondent canceled the order per Claimant's request after it had again been adjusted for "ex-dividend". Respondent further contended that there was a brief delay in responding due to delay in NYSE's response to their inquiry on his behalf; however, Respondent did notify Claimant that the reason he had not purchased the stock was because his bid had been reduced due to an intervening "ex-dividend" in accordance with NYSE rules and Rochelle Zasa so explained this matter to him on the telephone. Respondent asserted that Claimant was contributorily negligent by failing promptly to respond to the price adjustment notice, Claimant failed to mitigate his claimed damages thus Claimant is barred from any recovery by the doctrines of waiver, estoppel and laches.

#### **RELIEF REQUESTED**

Claimant Corby Sable requested \$9,900.00 in actual damages.

Respondent Ohio Savings Securities, Inc. requested the claim be dismissed with prejudice.

#### **AWARD**

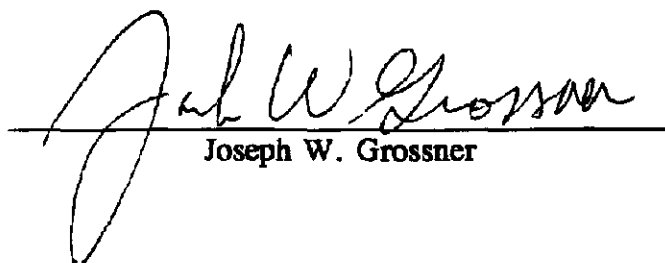
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph W. Grossner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 14, 1992 and by the Respondent on May 20, 1993.

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. The claim of Claimant Corby Sable against Respondent Ohio Savings Securities, Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Corby Sable shall be retained by the NASD, Inc.

AFFIRMATION

I, JOSEPH W. GROSSNER, 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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Joseph W. Grossner

DATE OF DECISION: September 1, 1993