

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Walter and Shirley Nadle

93-02550

Name of Respondents

Pacific Brokerage Services, Inc.
Security Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 28, 1993, Claimants Walter and Shirley Nadle, who were represented by Michael B. Rappel, Esq., Tamarac, Florida, alleged that between May 15, 1992 and September 21, 1992 they bought a total of 4000 Deprenyl USA, Incorporated warrants from Respondent Security Brokerage Services, Inc. with an expiration date of December 31, 1993. Claimants further alleged that they received statements of account and confirmations from the date of Claimants' first purchase through February 26, 1993 from Respondent Security Brokerage Services, Inc. and Respondent Pacific Brokerage Services, Inc. which indicated an expiration date on the Deprenyl USA, Inc. warrants of December 31, 1993. Claimants maintained that on February 26, 1993 they received a statement of account from Respondents which indicated a change in the expiration date of the warrants from December 31, 1993 to April 17, 1993. Claimants further maintained that had they known the expiration date of the warrants was in April, 1993 instead of December, 1993, they would have disposed of the warrants at some point between August and November, 1992, when they could have been sold at a profit. Claimants contended that as a result of the above, they have suffered damages for which the Respondents should be held liable.

Respondent Security Brokerage Services, Inc. and Respondent Pacific Brokerage Services, Inc., through their in-house representative James R. Kruger, maintained that the Claimants are sophisticated investors who were never solicited by

Respondents to purchase the 4000 warrants in question. Respondents further maintained that the incorrect expiration date on the warrants was a clerical data processing error and cannot be construed as willful intent to defraud the Claimants. Respondents contended that the Claimants could not have sold the warrants from August 1, 1992 through September 9, 1992 at a profit. Respondents further contended that Claimants failed to mitigate their losses by not selling the warrants while they still had value prior to their expiration, as twenty-five percent of the average cost of Claimants' investment could have been obtained in early March, 1993, when the Claimants were aware of the correct expiration date. As a result of the above, Respondents requested that the Claimants' Statement of Claim be dismissed.

RELIEF REQUESTED

Claimants Walter & Shirley Nadle requested \$8,115.00 in actual damages, costs, attorney's fees and any other relief deemed just and proper.

Respondents Pacific Brokerage Services, Inc. and Security Brokerage Services, Inc. requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Thomas Fotopulos, 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 July 15, 1993, by Respondent Pacific Brokerage Services, Inc. on September 27, 1993, and by Respondent Security Brokerage Services, Inc. on September 14, 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. Respondents Pacific Brokerage Services, Inc. and Security Brokerage Services, Inc. are jointly and severally liable and shall pay to the Claimants Walter & Shirley Nadle \$6,115.00 in actual damages.
2. The parties shall bear their respective costs, including attorney's fees.

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3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, **THOMAS FOTOPULOS, ESQ.**, do hereby affirm upon my oath of 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: June 14, 1994