

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Hildegard Rother

93-03092

Name of Respondents

Benjamin & Jerold Brokerage

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 6, 1993, Claimant Hildegard Rother, who appeared Pro Se, alleged that she traded options with Respondent Benjamin & Jerold Brokerage based on the advice of the "Trader's Journal", a daily publication. Claimant alleged that she informed Respondents that she no longer followed the advice of the "Traders Journal" prior to placing the March 8, 1993 Scimed Life options purchase order with Respondents. Claimant further alleged that on March 8, 1993, she had placed an order through Respondent for 10 contracts of Scimed Life options at \$4 5/8. Claimant further alleged that she told her broker at Respondent that this position should be sold only if Scimed Life stock traded as high as \$48 1/2 or as low as \$40 1/4. Claimant contended that the option contracts were sold on March 12, 1993 without Scimed Life stock reaching \$48 1/2 or \$40 1/4, and without any other express authorization of the sale by Claimant. As a result of the above, Claimant contended that she has suffered damages for which the Respondent should be held liable.

Respondent Benjamin & Jerold Brokerage, through its counsel Jerry M. Santangelo, Chicago, Illinois, maintained that when Claimant purchased the ten Scimed Life option contracts from Respondent, she instructed Respondent to no longer follow the buy and sell recommendations set forth in the "Trader's Journal" when executing her trades, but that she specifically directed the Respondent to continue making the stop/target adjustments set forth in the "Trader's Journal" for any open position held in her account. Respondent

further maintained that the March 11, 1993 fill of the stop on the SciMed puts was pursuant to the stop authorization at \$47 5/8 as directed by Claimant's instruction to follow the "Trader's Journal" stop adjustments. Respondent contended that the Claimant's damage claim was unsupportable, since she only had a \$1,700.00 out-of-pocket loss resulting from this high-risk trade, yet she was seeking \$8,500.00 in actual damages. Respondent further contended that the only basis for the \$8,500 damage claim is that the options in question reached a high of \$11 1/2 on March 18, 1993, and that a damage claim seeking a wished-for potential lost trading opportunity at an absolute high sales price is entirely speculative. Respondent maintained that Claimant could have bought the options in question on March 17, 1993, when Claimant had already become aware of the March 11, 1993 sale, and the options were trading at a price between \$5 3/4 and \$8 1/8. Respondent further maintained that Claimant's refusal to reestablish her position in the options further supports the assertion that she cannot now seek to charge Respondent with speculative market gains through March 18, 1993 when she refused to bear this market risk herself. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Hildegard Rother requested \$8,500.00 in actual damages.

Respondent Benjamin & Jerold Brokerage requested that the Claimant's Statement of Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Steven Samson, 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 26, 1993 and by the Respondent on October 13, 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. Respondent Benjamin & Jerold Brokerage is liable and shall pay to Claimant Hildegard Rother \$8,500.00 in actual damages.
2. The parties shall bear their own costs.

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

AFFIRMATION

I, STEVEN SAMSON, 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: 6/29/94

DATED BY THE NASD, INC.: July 12, 1994