

N.A.S.D. FINAL ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jonathan Maclain Scott

vs.

Order  
#93-04331

Name of Respondents

National Financial Services Corp.  
Chicago Board of Options Exchange

REPRESENTATION

Claimant, Jonathan Maclain Scott ("Claimant"), represented himself at the hearing.

For Respondent, National Financial Services Corporation, a division of Fidelity ("Respondent"), David C. Boch, Esq. from the law firm of Bingham Dana & Gould, located in Boston, Massachusetts.

HEARING INFORMATION

Pre-Hearing Conference: July 22, 1994 - 1 session.

Hearing Location: NASD offices located, at 260 Franklin Street, Boston, Massachusetts.

ORDER AND DISMISSAL

In 1987, Claimant was a stock broker employed by the now-defunct brokerage firm New England Discount Brokerage, Inc. ("NED"). Claimant allegedly made, and then lost, about \$1.5 million while trading for his own account in the options market. He brought this action in 1993 against National Financial Services Corp., NED's clearing firm at the time in question. Claimant claimed that he was Respondent's "customer" when he was trading for himself, and that Respondent violated certain NASD and New York Stock Exchange rules related to his trading.

Respondent moved to dismiss the claim, arguing 1) that as clearing broker, its obligations were spelled out in a clearing agreement (the "Clearing Agreement") between Respondent (as clearing broker) and NED (as corresponding broker), 2) that a clearing broker is not liable to the customers of a corresponding broker, and 3) that Massachusetts law does not recognize a private right of action for certain securities rule violation.

The Panel concurs with Respondent's arguments.

Respondent was the clearing broker in this matter. Its responsibilities were set forth in the Clearing Agreement. The Clearing Agreement placed the responsibilities for obligations to NED's customers upon NED. Claimant argues that because he was placing orders for himself, he was a customer of Respondent, but when asked by the panel, he could produce no extrinsic evidence of a customer-broker relationship between him and Respondent other than confirmation slips that identified NED as the brokerage firm and contained his symbol as the registered representative. He had no customer agreement with Respondent, no options agreement with Respondent, NED paid the commissions on its employees trades, and Claimant paid for his trades by personal check to NED. Accordingly, we find that the Respondent was only a clearing broker in this case.

Clearing brokers' responsibilities are set forth in the clearing agreement, and clearing brokers have no fiduciary relationship with the customers of a corresponding broker. Fine v. Bear, Stearns & Co., Inc., 765 F. Supp. 824 (SDNY 1991); Dillon v. Militano, 731 F. Supp. 634 (SDNY, 1990).

Accordingly, Respondent's Motion to Dismiss is granted, and forum fees are assessed against the moving party.

#### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed against Respondent.

Non-refundable Filing Fee: \$250.00

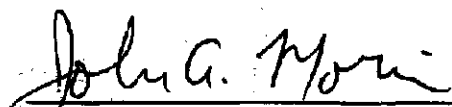
Pre-hearing Conference Fee: \$1,000.00 (\$1,000.00 x 1 session with three arbitrators).

- 1) Claimant deposited two checks, one in the amount of \$1,250.00 and the other in the amount of \$950.00. Claimant is entitled to a refund totalling \$2,200.00.
- 2) Respondent shall satisfy the fees assessed by reimbursing Claimant \$1,250.00.
- 3) The NASD shall refund Claimant \$950.00.

ARBITRATION PANEL

S. Lawrence Gwin, Jr.	-	Public Chairperson
Robert D. Banz	-	Public Panelist
John A. Morin, Esq.	-	Industry Panelist

Arbitrator's Signature

  
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John A. Morin, Esq.

NASD DATE OF DECISION: September 8, 1994


**ARBITRATION PANEL**

S. Lawrence Gwin, Jr.      Public Chairperson

Robert D. Banz      Public Panelist

John A. Morin, Esq.      Industry Panelist

Arbitrator's Signature

  
S. Lawrence Gwin, Jr., Esq.

NASD DATE OF DECISION:      September 8, 1994

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Robert D. Banz

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