

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Todd K. Sommer

93-04785

Name of Respondents

David A. Noyes & Company

REPRESENTATION

For Claimant, Todd K. Sommer ("Claimant"), John Keyse-Walker, Esq. of Fauver, Tattersall & Gallagher located in Elyria, Ohio.

For Respondent, David A. Noyes & Co. ("Respondent"), Robert L. Cram, Esq. in-house counsel, located in Indianapolis, Indiana.

CASE INFORMATION

Statement of Claim filed: November 17, 1993.

Claimant's Submission Agreement signed on: November 15, 1993.

Statement of Answer and Counterclaim filed by Respondent, on: January 20, 1994.

Respondent's Submission Agreement signed on: February 28, 1994.

Claimant's Reply to Counterclaim filed on: February 15, 1994.

HEARING INFORMATION

Hearing Date/Sessions: January 31, 1995 - 2 Sessions

Hearing Location: Office Building located at 30100 Chagrin Blvd., 3rd Floor, Cleveland,

CH 4824

CASE SUMMARY

Claimant stated he maintained a cash account with Respondent in January 1992. Claimant alleged that on January 10, 1992, he instructed Respondent to sell the shares of Amgen and Centocor stock in that account and reinvest the proceeds, not to exceed the cash balance available in his cash account, in the purchase of other Amgen, Centocor and Walt Disney Co. stock. Claimant stated that Respondent purchased securities in the latter companies during February 1992, but the cost exceeded the cash balance in Claimant's account. Claimant further alleged that Respondent informed him it had purchased the stocks for the Claimant, and that he now owed Respondent a debit balance on the margin account. Claimant maintains he never requested nor authorized a margin account. Additionally, Claimant alleged he demanded Respondent which had been purchased with the cash balance from Claimant's account, but that Respondent has refused to comply.

Respondent defended by stating that all transactions were authorized and that Claimant was made aware of the status of his account through phone conversations and monthly account statements. Respondent stated that on January 31, 1992, the beginning cash balance in Claimant's account was \$18,375.93. Respondent further stated that each securities purchase during February 1992, stated Respondents, clearly showed a debit balance owed or \$4,437.32 which Claimant refused to pay.

Respondent went on to explain that in March 1992, Respondent, by its broker, Joe Frisone, told Claimant that he could either pay off the debit balance, reverse the most recent trade or incur a margin balance and be charged interest. Respondent stated that Claimant indicated Mr. Frisone should "do nothing" with the account.

Respondent stated Mr. Frisone told Claimant that that meant he would incur margin interest. Since that time, Respondents maintain Claimant was aware he owed the outstanding balance and margin interest, and was told that Respondent began clearing through Alex Brown & Sons, Inc. Furthermore, alleged Respondent, Claimant's attorney, in an attempt to have the stocks at issue turned over to Claimant, specifically told Respondent not to sell the securities to eliminate the purported margin debit, specifically. Respondent, in its counterclaim, requested an award in the amount of the margin debt.

Claimant denied all allegations against it in the counterclaim, with respect to ever authorizing a margin account.

RELIEF REQUESTED

Claimant requested \$18,375.93 in actual damages together with interest from January 10, 1992.

Respondent requested the claim be denied in its entirety, and that Claimant be ordered to pay Respondent \$4,437.32 plus interest from February 28, 1992, attorneys fees and costs in damages.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Claimant is liable to Respondent in the amount of FIVE THOUSAND THREE HUNDRED SEVENTY-EIGHT dollars and FIFTY-FIVE CENTS (\$5378.55) which includes interest.

If Claimant pays that amount within the next thirty days, then all securities in the account will promptly be turned over to him. If not, Respondent is authorized to sell whichever securities they choose, take \$5378.55 from the proceeds and remit the balance of the securities and any cash to Claimant.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:


Nonrefundable filing fees:	\$ 600.00
Hearing Session Deposit(\$300.00 x 2 Sessions)	\$ <u>600.00</u>
Total Fees:	\$ <u>1200.00</u>

1. Claimant paid \$400.00 and owes nothing.
2. Respondent paid \$800.00 and owes nothing.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Public/Industry


Lawrence R. Barker

NASD Date of Decision: April 19, 1995