

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Battle Creek Inc. c/o Peter B. Sommer

94-00385

Name of Respondents

Fox and Company

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 1, 1994, Claimant Battle Creek, Inc. c/o Peter B. Sommer, which appeared Pro Se, alleged that Respondent Fox and Company Investments, Inc. sold his 350 shares of Wal-Mart Stores Inc. stock from his account, when in fact only 62 shares had to be sold in order to satisfy the margin requirement for his account. Claimant further alleged that he did not receive from Respondent notification that he needed additional margin in his account until "after the fact". Claimant contended that the sale destroyed his plans and investment strategies. In his response to Respondent's Statement of Answer, Claimant further contended that he never received a maintenance call for \$123.00, and that he overpaid all margin requirements that were disclosed to him. As a result of the above, Claimant contended that he has suffered damages for which the Respondent should be held liable.

Respondent Fox and Company Investments, Inc., through its representative James W. Moldermaker, maintained that Southwest Securities, Inc. carries customer accounts introduced by Respondent. Respondent further maintained that Southwest Securities, Inc.'s house rules require a margin account to be maintained at a minimum 35% diversified debt-to-equity ratio, and that Claimant's account statement for September, 1990 reflected a 32% debt-to-equity ratio. Respondent contended that Southwest Securities, Inc. issued calls to Claimant for additional margin requirements during the first two weeks of October, 1990, and that Claimant made no deposits to meet these calls.

Respondent further contended that on October 9, 1990, the debt-to-equity ratio in Claimant's margin account fell below the exchange maintenance 30% requirement level, and that on this date a maintenance call of \$123.00 due October 17, 1990 was issued to Claimant. Respondent maintained that an additional maintenance call for \$1,350.00 due October 17, 1990 was made on October 11, 1990, since Claimant's account was now subject to a 40% debt-to-equity ratio. Respondent further maintained that Claimant made no deposits to meet either of these maintenance calls, even though in his signed Margin Account Agreement Claimant agreed to maintain margins for his account as required by Southwest Securities, Inc. Respondent contended that Claimant entered an unsolicited order to sell his entire position of 350 shares in Wal-Mart Stores, Inc. on October 17, 1990. As a result of the above, Respondent maintained that it should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Battle Creek, Inc. c/o Peter B. Sommer requested \$7,236.00 in actual damages.

Respondent Fox and Company Investments, Inc. 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, Douglas E. Smith, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 24, 1994 and by the Respondent on May 12, 1994.

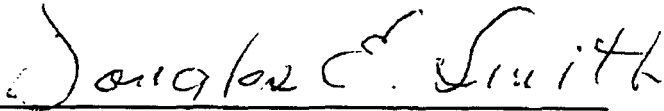
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Battle Creek Inc. c/o Peter B. Sommer against Respondent Fox and Company Investments, Inc. are dismissed in their entirety.
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 shall be retained by the NASD, Inc.

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**AFFIRMATION**

I, **DOUGLAS E. SMITH**, 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.

  
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Signature of Arbitrator

**DATE OF DECISION:** September 27, 1994