

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

James R. and Sandra L. Pease

and

94-00579

Name of Respondent

David A. Noyes & Co.
John F. Rath

REPRESENTATION OF PARTIES

James R. and Sandra L. Pease ("Claimants") was represented by Alfred Y. Kirkland, Jr., Esq., Brady, McQueen, Martin, Collins & Jensen, Elgin, Illinois.

David A. Noyes & Co. ("Respondent Noyes") and John F. Rath ("Respondent Rath")(collectively as "Respondents") were represented by Robert L. Cram, Esq., David A. Noyes & Co., Indianapolis, Indiana.

CASE INFORMATION

The Statement of Claim was filed on or about February 16, 1994. Submission Agreement of Claimants James R. and Sandra L. Pease was signed on February 2, 1994.

Statement of Answer was filed by Respondents David A. Noyes & Co. and John F. Rath on or about June 21, 1994. Submission Agreement of Respondent David A. Noyes & Co. was signed on June 3, 1994 by Robert L. Cram. Submission Agreement of Respondent John F. Rath was signed on June 2, 1994.

HEARING INFORMATION

The hearing was held on March 16, 1995 for two (2) sessions, March 17, 1995 for two (2) sessions, and Monday, August 21, 1995 for one (1) session in Chicago, Illinois for a total of five (5) sessions.

CASE SUMMARY

Claimant alleged that Respondent John Rath in September, 1989, executed on their account the sale of "put" options of UAL Corp. without explaining to them the high level of risk to which they were exposing themselves compared to the limited upside potential of the options. Claimants also alleged that the UAL takeover situation was highly volatile and unpredictable and that this fact was known to Mr. Rath but never explained to them.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Respondent Rath had explained to Claimants the risks of option trading prior to their initial option trade in 1987. It was stated that the Claimants began Index option trading in 1987 at the recommendation of their financial planner, William Kahn. It was further stated that the Claimants had prior experience in trading options on a stock that was subject of a takeover, specifically, RJR Nabisco.

RELIEF REQUESTED

Claimant requested an award in the total amount of \$88,606 which sum includes a request of punitive damages in the amount of \$36,3030.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their attorneys' fees for the defense of this meritless claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Dismiss based upon the applicable statutes of limitation and the arguments of the respective parties was considered by the undersigned arbitrators and **denied**.

The parties have agreed that a handwritten, signed Award may be entered. The parties have 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed with prejudice.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were five (5) sessions x \$500 = \$2,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant James R. and Sandra L. Pease. Respondent David A. Noyes & Co. shall be and hereby is liable for and shall pay to the NASD the sum of \$2,000 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ James East, Esq.

James East, Esq.

Public Arbitrator, Presiding Chair

September 8, 1995

/s/ Stephen E. Smith, Esq.

Stephen E. Smith, Esq.

Public Arbitrator

September 12, 1995

/s/ Thomas S. Wilson

Thomas S. Wilson

Industry Arbitrator

September 8, 1995