

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant/Counter-Respondent**

Charles Leon Deaton

94-00784

**Name of Respondents/Counter-Claimants**

D.R. Hancock & Company, Inc.;  
Elise C. Tanner

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**REPRESENTATION**

For Claimant/Counter-Respondent: Charles Leon Deaton ("Deaton") was represented by Scott P. Hendricks, Esq. and Cynthia A. Hagan, Esq. of Hendricks & Hagan, located in Carbondale, Illinois.

For Respondent/Counter-Claimants: D.R. Hancock & Company, Inc. ("Hancock & Company") and Elise C. Tanner ("Tanner") were represented by Joanne D. Martin, Esq. of Peper Martin Jensen Maichel & Hetlage, located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed: March 2, 1994.

Deaton's Submission Agreement signed on: February 23, 1994.

Statement of Answer and Counterclaim filed by Respondents/Counter-Claimants Hancock & Company and Deaton on: April 21, 1994.

Hancock & Company's Submission Agreement signed on: April 11, 1994 by D.R. Hancock, President, D.R. Hancock & Company, Inc.

Tanner's Submission Agreement signed on: April 11, 1994.

Deaton's Reply to Respondents/Counter-Claimants' Counterclaim filed: April 29, 1994.

### **HEARING INFORMATION**

Pre-Hearing Conference: November 1, 1994 for One (1) session before One (1) arbitrator.  
Hearing Dates/Sessions: November 9, 1994 for Two (2) sessions;  
November 10, 1994 for Two (2) sessions.  
Hearing Location: St. Louis, Missouri.

### **CASE SUMMARY**

Claimant/Counter-Respondent Deaton alleged that Respondent/Counter-Claimant Tanner, while employed by or acting as an agent for Respondent/Counter-Claimant Hancock & Company, misrepresented or failed to explain the risks of investing in U.S. Treasury Bonds on margin, even though Deaton was a novice investor looking for a safe investment. Deaton eventually began receiving numerous margin calls and was required to borrow money to meet the calls. Based upon the allegations, Deaton asserted claims for constructive fraud; negligent misrepresentation; and for violation of the Illinois Consumer Fraud and Deceptive Practices Act. The claim for violation of the Illinois Consumer Fraud and Deceptive Practices Act was based on failing to disclose material information in recommending the original bond purchase and soliciting a second purchase, and for violating the NASD Rules of Fair Practice for recommending excessive trading and unsuitable investments.

Hancock & Co. and Tanner denied the material allegations of the Statement of Claim, alleging that:

1. Deaton directed the investments in his account and acted on the recommendations of his banker friend and not his broker;
2. Tanner did not discover until after the second (and last) bond purchase that Deaton was borrowing money to make investments;
3. Deaton was in continual contact with Tanner, and she fully explained the risks of the bond market and margin account to Deaton who made his own investment decisions;
4. Deaton was college educated and represented to Tanner that he understood U.S. Treasury zero coupon bonds. This understanding was confirmed to Tanner in their daily conversations; and
5. Deaton executed a covenant not to sue these respondents in August 1990 which bars this claim and has further agreed to indemnify and hold them harmless

if they became involved in this type of litigation.

In addition, Hancock & Co. and Tanner asserted several affirmative defenses, including the following:

1. The claim is barred, in whole or in part, by the applicable statute of limitations;
2. There is no private right of action for violation of the NASD Rules of Fair Practice;
3. The equitable doctrines of waiver, estoppel, ratification and laches bar Deaton from recovery;
4. The claims are barred, in whole or in part, by Deaton's contributory fault and his failure to mitigate damages; and
5. The claims for punitive damages violate applicable law and violate due process.

Hancock & Co. and Tanner asserted a counterclaim based upon the indemnification and hold harmless instrument agreed to by Deaton in August 1990.

Deaton denied the allegations of the Counterclaim, asserting that the August 1990 agreement is unenforceable because it lacked consideration, and it was executed under duress and was unconscionable as a matter of law. In addition, Deaton asserted that the indemnification provision cannot be used to recover attorneys' fees and damages because the indemnification provision does not apply to actions brought against Respondents/Counter-Claimants by Deaton.

#### **RELIEF REQUESTED**

Deaton requested entry of an award against Respondents/Counter-Claimants for actual damages in the sum of \$66,750.01, representing commissions paid, margin interest paid, interest paid to banks to meet margin calls, the return that should have been made and out of pocket costs; attorneys' fees in the sum of \$18,368.50 pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act; and punitive damages in an amount not less than \$100,000.00.

Hancock & Company and Tanner requested that this matter be dismissed and that they be awarded their attorneys' fees and costs incurred pursuant to Deaton's indemnity agreement. In the alternative, the Respondents/Counter-Claimants requested that Deaton be denied all relief and that they Respondents be awarded all their fees and costs incurred in this arbitration and in the lawsuit filed by Deaton in the First Judicial Circuit for Jackson County, Illinois which was compelled to arbitration.

Deaton requested that Respondents' Counterclaim be dismissed and the demand for damages be denied.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain 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. Respondents/Counter-Claimants D.R. Hancock & Company, Inc. and Elise C. Tanner are jointly and severally liable for and shall pay to the Claimant/Counter-Respondent, Charles Leon Deaton, the sum of \$26,035.35 as actual damages, with simple interest at the rate of 6.5 % per annum accruing from May 1, 1991 until the sum is paid in full;
2. In addition, Respondents/Counter-Claimants D.R. Hancock & Company, Inc. and Elise C. Tanner are jointly and severally liable for and shall pay to Claimant/Counter-Respondent Charles Leon Deaton the sum of \$13,102.75 as attorneys' fees. In deciding to award attorneys' fees to Deaton, the Panel considered the arguments made by the parties and determined that authority existed for an award of attorneys' fees to the Claimant/Counter-Respondent, Charles Leon Deaton;
3. In regard to Respondents' Counterclaim, Claimant/Counter-Respondent Charles Leon Deaton is liable for and shall pay to Respondents/Counter-Claimants D.R. Hancock & Company, Inc. and Elise C. Tanner the sum of \$7,038.00 for attorneys' fees incurred in defending Respondents/Counter-Claimants in the action brought by Claimant/Counter-Respondent in the First Judicial Circuit of the Illinois state court. In determining to award attorneys' fees, the Panel considered the arguments presented by the parties, and determined that authority existed for an award of attorneys' fees to Respondent/Counter-Claimants D.R. Hancock & Company, Inc. and Elise C. Tanner;
4. The claim for punitive damages is hereby dismissed with prejudice and denied in its entirety;

5. The parties shall bear their own costs of arbitration, including any additional attorneys' fees incurred, except for those specifically enumerated herein; and
6. Any further relief not specifically granted is hereby denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference with one (1) arbitrator x \$300.00 = \$300.00; Four (4) hearing sessions x \$750.00 per session = \$3,000.00; Total Forum Fees = \$3,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant/Counter-Respondent, Charles Leon Deaton. Claimant/Counter-Respondent Charles Leon Deaton is liable for and shall pay to the NASD additional forum fees in the sum of \$2,550.00. In addition, the NASD shall retain the \$250.00 claim filing fee and refund the \$600.00 hearing session deposit previously deposited by the Respondents/Counter-Claimants D.R. Hancock & Company, Inc. and Elise C. Tanner.

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

Concurring Arbitrators' Signatures  
Name

Date

/s/ Leah M. Balk, Esq.  
Leah M. Balk, Esq.  
Public Arbitrator  
Chairperson

January 29, 1995

/s/ Joseph W. Twombly  
Joseph W. Twombly  
Public Arbitrator

January 30, 1995

/s/ Timothy M. Kelly, Esq.  
Timothy M. Kelly, Esq.  
Industry Arbitrator

January 27, 1995

For NASD Use Only  
Date of Decision: February 6, 1995