

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Timothy H. Burton

94-01073

Name of Respondents

Duke & Co., Inc. and Gary Richard Marder

REPRESENTATION OF PARTIES

Claimant, Timothy Burton was represented at the hearing by Mark Briol, Esq. and Greg Wilmes, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

Respondent, Duke & Co., Inc. was represented at the hearing by Charles M. O'Rourke, Esq., Hempstead, New York.

Respondent, Gary Richard Marder was represented at the hearing by Lawrence M. Philips, Esq. of Bizar & Martin, New York, New York.

CASE INFORMATION

Statement of Claim was filed on March 21, 1994. Claimants' Submission Agreement was signed on February 28, 1994.

Statement of Answer was filed by Respondent, Duke & Co., on or about May 12, 1994. Statement of Answer was filed by Respondent Gary Marder on or about May 27, 1994.

Respondent, Duke & Co.'s Submission Agreement was signed on May 6, 1994. Respondent Gary Marder's Submission Agreement was signed on May 26, 1994.

HEARING INFORMATION

The hearing was held in Minneapolis, Minnesota on January 10, 1995 for a total of two hearing sessions.

CASE SUMMARY

Claimant, Timothy Burton ("Burton") alleged in his Statement of Claim that Respondent Gary Marder ("Marder") broker for Respondent Duke & Co., Inc. ("Duke") purchased 5000 shares of Atari stock without authorization from Burton.

Respondent Duke stated in its Statement of Answer that its supervisory procedures prohibit unauthorized trading and that they questioned Marder about the trade and found no evidence of wrongdoing.

Respondent Marder stated in his Answer that Burton was a sophisticated investor and that Atari was discussed as one stock Marder would buy for Burton, and he received full oral approval to make the purchase.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$17,870.92, interest on all damages awarded, an award of double and/or triple punitive damages of \$57,097.56, under Minn. Stat. Sec. 609.53 subd. 4, Minn. Stat. Sec. 332.51, and Minn. Stat. Sec. 549.20, attorney's fees of \$19,984.15 as required by the Minnesota Securities Laws and the Minnesota Treble Damages Theft Statute, plus costs, disbursements, and expenses, and for such other relief as the panel shall deem just and equitable.

Respondents requested that the Statement of Claim be dismissed with costs assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Gary Marder appeared by telephone during the hearing with permission of the panel.

The parties have agreed that the Award in this matter may be executed by 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 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. Respondents, Duke & Co., Inc. and Gary Marder, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, Timothy Burton, damages in the sum of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00);
2. Claimant's request for interest is denied;
3. Claimant's request for attorney's fees is denied;

4. Claimant's request for double and/or triple punitive damages is denied;

5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions x \$500 = \$1000 minus hearing session deposit of \$500 = net \$500 due to the NASD.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150, and shall retain the hearing session deposit in the amount of \$500 previously paid to the NASD by Claimant.

The panel has ordered that Respondents, Duke & Co., Inc. and Gary Marder, are jointly and severally liable for the additional forum fees in the sum of \$500. The panel has also ordered that Respondents, Duke & Co., Inc. and Gary Marder, are jointly and severally liable for reimbursing Claimant the sum of \$650 which was previously deposited with the NASD as filing fee and hearing session deposit.

The additional Forum Fees in the sum of \$500 which are assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

2/3/95

s/s A. James Dickinson
A. James Dickinson, Esq.**
Presiding, Public Arbitrator

2/3/95

s/s Robert R. Bigelow
Robert R. Bigelow, Esq.
Public Arbitrator

2/2/95

s/s Gerald Gifford
Gerald M. Gifford
Industry Arbitrator

****Dissents**

Date Award Served By The NASD: 2/14/95