

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

David K. Hayes

94-02189

Name of Respondents

Franklin-Lord, Inc.  
Robert Arthur  
Bradley T. Shaw

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 10, 1994, Claimant David K. Hayes, who appeared Pro Se, alleged that Respondents Bradley T. Shaw ("Shaw"), Robert Arthur ("Arthur") and Franklin-Lord, Inc. ("Franklin-Lord") failed to execute a transaction for him. Claimant further alleged that his purchase of 300 shares of Monterey Pasta at \$6.00 per share was delayed from November 6 to December 7 and changed from 300 shares to 200 shares. Claimant contended that on December 14 he contacted Respondent Shaw, his account executive, and placed a "sell" order at \$10.00 for 200 shares which he lowered to \$9.50 on December 16. Claimant further contended that on December 16, Respondent Shaw told him that his 200 shares were being denied because the policy of Respondent's financial firm, RFC Clearing Services was not to accept a check if the name on the check differed from the name on the brokerage account. Claimant alleged that he contacted RFC Financial Services and that they said it was "not a problem" but Respondent Arthur, the Compliance Officer for Respondent Franklin-Lord, refused to accept his check. As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondents Franklin-Lord, Inc., Robert Arthur and Bradley T. Shaw, through their representative H. Thomas Fehn, of Fields, Fehn & Sherwin in Los Angeles, CA, maintained that Claimant's account was opened on November 4, 1993 as David Hayes. Annett Hayes JTEN and Claimant purchased 200 shares of Monterey Pasta. Respondents further maintained that a check imprinted with "Hayes Marketing" was received by Respondent Franklin-Lord on December 14, 1993 and Claimant was informed the check could not be accepted and the check was returned. Respondents contended that RAF Financial Services responded to Claimant's

inquiry saying they had no problem with his account but Respondent Franklin-Lord returned the check to Claimant as it was not in compliance with the material information as given by Claimant at the time the account was opened. As a result of the above. Respondents maintained that they should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimant David K. Hayes requested \$800.00 in actual damages, \$500.00 in punitive damages, and \$50.00 in costs.

Respondents Franklin-Lord, Inc., Robert Arthur and Bradley T. Shaw requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Chet Olsen, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 22, 1994 but not signed by the Respondents as required by Sections 12 & 13 of the Code of Arbitration Procedure.

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 the Claimant David K. Hayes against Respondents Franklin-Lord, Inc. Robert Arthur and Bradley T. Shaw are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 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, **CHET OLSEN**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read 'Chet Olsen', is written above a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:** February 28, 1995