

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Edward Lyon

95-00052

Name of Respondents

R A F Financial Corp.  
Mark K. Skow

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 3, 1995 Claimant Edward Lyon ("Claimant"), who appeared Pro Se, alleged that Respondents RAF Financial Corporation ("RAFFC"), and Mark K. Skow ("Skow"), sold 100 shares of National Health Enhancement Systems, Inc ("NHES"), which were located in account 57-40002265 in order to cover an inactive fee. Claimant further alleged that he had opened the account by purchasing the 100 NHES shares in June, 1990 and did not request any further action with respect to the account until May, 1994. Claimant contended that RAFFC issued him a check for \$43.75 on May 12, 1994 which he did not cash but instead requested replacement of the 100 shares of NHES. Claimant further contended that Respondents refused to replace the stock, and as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondent RAF Financial Corporation, through its representative and in-house counsel, Russell C. Burk, Esq., maintained that the case revolves around the inactive fee charged by it against the Claimant. Respondent further maintained that it sends inactive fee letters to all of its inactive accounts which are provided for in each account statement. Respondent contended that inactive accounts are a significant cost and an administrative burden for which a fee is assessed. Respondent further contended that it acted within its inactive account policy guidelines which state that a \$50.00 fee will be assessed against the account at the end of the first year and \$75.00 at the end of consecutive years for any inactive account in addition to any charges incurred in collecting the above fees. Respondent maintained that as a result of the above, it should not be held liable.

Respondent Mark K. Skow, who appeared Pro Se, maintained that he was not employed by RAFFC at the time of the dispute. Respondent further maintained that he was registered with Simmons & Bishop Co., "about ten months prior to the initial trade in question, that took place at RAF Financial, not to mention 10/15/91 when the liquidation of the account took place." Respondent contended that as a result of the above, he should not be held liable.

### **RELIEF REQUESTED**

Claimant Edward Lyon, requested \$412.50 in actual damages plus costs.

Respondent RAF Financial Corporation, requested that the claims of the Claimant be dismissed.

Respondent Mark K. Skow, requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert D. Boone, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Edward Lyon, on November 18, 1994, and by the Respondent RAF Financial Corporation, on February 23, 1995 and by Respondent Mark K. Skow, on February 24, 1995.

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 Respondents RAF Financial Corporation and Mark K. Skow, are jointly and severally liable and shall pay to the Claimant Edward Lyon \$412.50 in actual damages.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondents RAF Financial Corporation and Mark K. Skow, are jointly and severally liable and shall pay to the Claimant Edward Lyon \$30.00 as reimbursement of the filing fee.

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**AFFIRMATION**

I, **ROBERT D. BOONE**, 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.

  
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Robert D. Boone

**DATE OF DECISION:** September 15, 1995