

AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

David E. Warwick

vs.

Case No.  
95-03594

Name of Respondents

Steven R. Cloyes  
Robert Todd Financial Corp.

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**REPRESENTATION**

For Claimant, David E. Warwick ("Claimant"), Jack Bryan Little, Esq. from the Law Offices of Jack Bryan Little, P.C., located in Boston, Massachusetts.

Respondent, Robert Todd Financial Corporation ("Robert Todd"), did not appear at the hearing. (See "Other Issues Considered and Decided" section of this decision).

For Respondent, Steven Cloyes ("Cloyes"), Diarmuid White, Esq. from the Law Offices of Diarmuid White, located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on July 20, 1995.

Claimant's Submission Agreement was signed on May 11, 1994.

Respondents, Robert Todd and Steven Cloyes, did not file Statements of Answer or execute Submission Agreements.

**HEARING INFORMATION**

Hearing Date/Session: September 16, 1996 - 1 session

Hearing Location: NASD Regulation offices, located in Boston, Massachusetts.

**CASE SUMMARY**

Claimant commenced this arbitration to seek damages as a result of violations by Respondents of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78j, and Rule 10b-5 of the Securities and Exchange Commission promulgated thereunder; Massachusetts General Laws Chapter 110A, Sec. 410; the negligent, reckless and fraudulent conduct of Respondents toward Claimant; and for breach of contract.

Claimant alleges that prior to his association with Respondents, he had virtually no experience in the purchase and sale of securities. Claimant also alleges that he opened a non-discretionary account at the Respondent firm and executed a margin agreement. Claimant further alleges that Respondent Cloyes without authorization purchased securities for Claimant's account and withheld the monthly statements from Claimant in order to conceal the unauthorized trade. Claimant states that it was not until December, 1993 that he received his statement and discovered the unauthorized transaction. Claimant also states that the stock was sold at a loss of approximately \$4,428.00 and his account was liquidated to cover the margin call resulting from the sale of the stock.

As previously stated Respondents did not file Statements of Answer.

#### **RELIEF REQUESTED**

Claimant requests an award of \$15,800 in compensatory damages jointly and severally. Alternatively, Claimant requests that Respondent jointly and severally be ordered to put Claimant back in the position he would be in had Respondents properly managed Claimant's account; that Respondents jointly and severally be ordered to disgorge to Claimant the amount that they were unjustly enriched; and that Respondent be ordered to pay Claimant attorney's fees equal to forty percent of the value of the award. Claimant also requests treble damages jointly and severally against Respondents and for such further relief as this arbitration panel deems just and proper.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD Regulation.

Prior to the commencement of the hearing, Claimant's by letter dated December 5, 1996, informed NASD Regulation that Claimant had settled his claims with Respondent Steven Cloyes.

Respondent, Robert Todd, did not attend the hearing to defend this matter. Based upon the papers on file with the NASD Regulation, Inc. concerning notices sent to Steven Cloyes as President of Robert Todd, this panel determined that notice was given and proceeded with the hearing in Robert Todd's absence pursuant to Sections 10314 and 10318 of the *Code of Arbitration Procedure* ("Code").

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Robert Todd is hereby liable and shall pay Claimant Eight Thousand, Five Hundred Dollars and Zero Cents (\$8,500.00).
2. All other claims for relief are denied.

#### **FORUM FEES**

Pursuant to Section 43(c) *Code*, the following Forum Fees are assessed against ~~Robert Todd~~.

STEVEN CLOYES

TB

Non-refundable Filing Fee: \$100.00  
Hearing Session Fee: \$400.00 (one session @ \$400 .00 per session)  
Total Fees: \$500.00

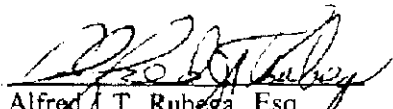
1. Claimant previously deposited \$500.00 and is entitled to a refund in that amount.
2. Respondent ~~Robert Todd~~ shall reimburse Claimant \$500.00 in satisfaction of the fees assessed.

*Steve L. Lyle*  


ARBITRATION PANEL

Alfred Ruberga, Esq.	-	Public Chairperson
Richard Salerno, MD	-	Public Panelist
Timothy F. Shanahan, CFP	-	Industry Panelist

Concurring Arbitrator's Signature

  
Alfred J. T. Rubega, Esq.

Date of Decision: October 22, 1996

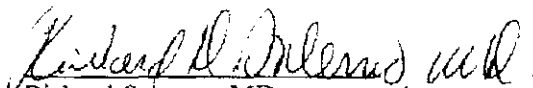
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Richard Salerno, MD	-	Public Panelist
Timothy F. Shanahan, CFP	-	Industry Panelist

Concurring Arbitrator's Signature

  
Richard Salerno, MD

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*STEVEN O'NEAL*

*TS*

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Timothy F. Shanahan, CFP	-	Industry Panelist

Concurring Arbitrator's Signature

*Timothy F. Shanahan*

Timothy F. Shanahan, CFP

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