

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

George A. Spengler

95-04204

Name of Respondent

James E. Rooney (withdrawn)
John W. Nolan, II

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 1, 1995, claimant George A. Spengler ("claimant"), who appeared Pro Se, alleged that respondent John W. Nolan, II, a broker of Thomas James Associates, Inc., churned his account in order to produce commissions and income for himself. Claimant further alleged that in April of 1987, he purchased 600 shares of Videospection ("Vystar") stock from an agent in the Buffalo office of Thomas James Associates, Inc. for \$722.50. Claimant also alleged that he got a statement in January 1993, showing the stock to be worth \$1,443.75. Claimant asserted that he called the Buffalo office to inquire about selling and was told that they could not help him and directed him to a broker named James Rooney ("Rooney") in their Dallas, Texas office. Claimant further asserted that after speaking at length with Rooney, he felt confident he was knowledgeable in the securities business and decided to work with him on future investments.

Claimant also asserted that between February 18, 1993, and August 1993, he purchased several different stocks at the investment advice of Rooney. Claimant contended in late August 1993, he received a phone call from Nolan, informing him that he was being transferred to Dallas to take over Rooney's accounts. Claimant further contended that he and Nolan discussed his account and what Rooney and he had been working on. Claimant also contended that on September 24, 1993 Nolan, called him and recommended selling 300 units of Excel Tech Sri and 2000 shares of Travelports of America because he felt they were poor investments. Claimant alleged that Nolan told him to purchase 1500 W.S. Excell Tech Warrants at a cost of \$5,115.00. Claimant further alleged that the warrants dropped in price after that and Travelports increased shortly thereafter.

Claimant also alleged that on May 17, 1994, Nolan called to say that he had some inside information that Excel Tech was about to call the warrants and that even though they were way down in price, he should sell them. Claimant asserted that he lost \$2,280.00 on the sale. Claimant further asserted that Nolan recommended that he buy 5600 W.S. Cynbernetics warrants at \$.50 each, and that even the slightest movement upward would enable him to recoup part of the loss from the Excel Tech. Claimant also asserted that on December 7, 1994, Nolan called him and informed him that he had made a mistake in recommending the Cybernetics warrants and proposed that he sell the warrants and 200 units of Integrated Securities for a loss.

Respondent John Nolan, II, through his representative and counsel Richard J. Milham, Jr. a sole practitioner located in Rochester, New York, maintained that he did not become claimant's registered representative of record until January 1, 1994. Respondent further maintained that when he took over claimant's account there were four long positions held in the account worth a total of \$7,250.00. Respondent also maintained that he did not recommend the purchase, nor did he sell to claimant, any of those securities which comprised the Long Positions. Respondent contended that he did not make a recommendation to claimant, nor did claimant purchase or sell any security through him until May 10, 1995, at which time the value of the Long Positions had decreased to \$4,799.00.

Respondent further contended that claimant purchased two securities through him. Respondent also contended that with both transaction he discussed the risks and positive and negative aspects of his recommendations. Respondent maintained that claimant had exercised control over the account and not him. Respondent further maintained that two purchases over a period of time in excess of one and one-half years in an account which maintained speculation as an investment objective in not excessive trading. Respondent also maintained that claimant is an experienced investor who is therefore charged with knowledge that there are risk inherent with any and all securities purchases.

Respondent James Rooney did not file a Statement of Answer.

RELIEF REQUESTED

Claimant George Spengler requested \$9,075.00 in actual damages.

Respondent John Nolan II requested that the claims of claimant be dismissed in their entirety, plus \$100.00 for costs, \$1,500.00 for attorneys' fees and order that his disciplinary history report be cleared of any reference to this matter.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator considered and reviewed all documentation submitted by the parties concerning claimant's request to amend his Statement of Claim to include Thomas James & Associates as an additional respondent. The arbitrator denied the request.

The arbitrator considered and reviewed all documentation submitted by the parties concerning claimant's October 1, 1996, request that he compel respondent to produce additional documents. The arbitrator denied the request.

Prior to a decision on the merits, claimant George Spengler withdrew, with prejudice, his claims against respondent James Rooney.

AWARD

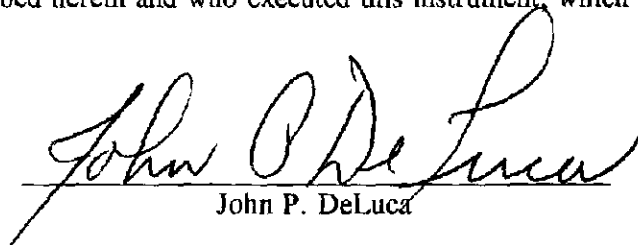
Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator John P. Deluca, was selected to review the matter in controversy between the parties set forth in submission to Arbitration signed by the claimant August 29, 1995, and by the respondent John W. Nolan, II on December 9, 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 claims of the claimant George A. Spengler against respondent John W. Nolan II, are denied in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **John P. DeLuca**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my oath and award.


John P. DeLuca

Date of Decision: December 6, 1996