

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Herbert C. Deesen

95-04396

Name of Respondent

K. Aufhauser & Co

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 14, 1995, Claimant Herbert C. Deesen ("Claimant"), who appeared Pro Se, alleged that Respondent K. Aufhauser & Co. ("Respondent"), induced him to open an account with it by offering access to international bond and equity markets. Claimant further alleged that on December 9, 1993 he ordered via fax 20,000 shares of Eastmet at the market but as of March 29, 1994 only 13,000 shares had been purchased and at a higher price than should have been paid. Claimant contended that the currency fluctuations increased the price of the shares between the order and the fill date and that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent K. Aufhauser & Co., through its representative, R. Keith Aufhauser, maintained that on December 9, 1993 it received a fax from Claimant which was unclear as to the Eastmet trade and which could not be immediately clarified because it did not have a return telephone number, a return address nor a return fax number. Respondent further maintained that Claimant's reference to Eastmet, a stock which had had its name changed to Gold Mines of Australia ("GMA"), and Claimant's apparent expectation of paying \$0.30 per share added to the confusion with respect to the fax. Respondent contended Claimant admitted that GMA was trading at \$0.35 per share on December 9, 1993, which would have prevented the trade at \$0.30 per share. Respondent further contended it chose not to execute the trade until the name and the price of the order were confirmed. Respondent maintained that Claimant called and modified his order December 10, and 14, by placing a limit of 15,000 GMA shares at \$0.40. Respondent further maintained it was not able to execute the limit order and since it was a foreign stock, the order expired at the end of the day. Respondent contended that it was unable to contact the Claimant and that the Claimant did not contact it until January 17, 1994. Respondent further contended that later on Claimant placed a new order for 13,000 shares of GMA which was executed in March of 1994, and that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Herbert C. Deesen, requested \$1,820.00 in actual damages plus punitive damages and interest.

Respondent K. Aufhauser & Co., 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, Kim T. Buckley, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Herbert C. Deesen, on September 18, 1995, and by the Respondent K. Aufhauser & Co., as is required by Sections 12 and 13 of the NASD 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 Respondent K. Aufhauser & Co., is liable and shall pay to the Claimant Herbert C. Deesen, \$1,350.00 in actual damages.
2. The Respondent K. Aufhauser & Co., is liable and shall pay to the Claimant Herbert C. Deesen, interest at the rate of 3% per annum from March 28, 1994, to date of payment of the Award.
3. The parties shall bear their respective costs.

4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Herbert C. Deesen, shall be retained by the NASD, Inc. The Respondent K. Aufhauser & Co., is liable and shall pay to the Claimant Herbert C. Deesen, \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, KIM T. BUCKLEY, ESQ., 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.



Signature of Arbitrator

DATE OF DECISION: January 29, 1996