

NASD Arbitration & Mediation

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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

N. Dennis Doane & Robin Doane

96-02584

Name of Respondent

Brown & Company Securities Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 17, 1996, claimants N. Dennis Doane and Robin Doane ("Doane"), who appeared Pro Se, alleged that respondent Brown & Company Securities Corporation ("Brown & Company") failed to provide written or oral notice of a stock symbol change prior to May 1, 1996, which resulted in a debit from his account. Doane further alleged that on May 2, 1996 when he checked DirectLine, Brown & Company's automated touchtone telephone service, his account #21877642 was long 25,000 shares of BIOP stock. Doane also alleged that on May 2, 1996, he placed an order (DirectLine 2*), to sell 5000 shares of BIOP at the market price. Doane indicated that he failed to notice that the confirmation erroneously reflected a sale for 5000 Bio Pharmaceuticals at \$18 1/2 per share.

Doane further asserted that on May 3, 1996, Brown & Company without prior notification, bought 5000 shares of BIOPSYS Medical at \$20 3/4 per share. Doane contended that he received a message to call Brown & Company but when he returned the call at 5:10 p.m., the office was closed. Doane further contended that on May 6, 1996 Brown & Company informed him that he had a short sale on BIOPSYS and that the account had been debited for \$11,250.00. Claimants also contended that they should not be held responsible for Brown & Company's failure to notify him of the stock symbol change.

Respondent Brown & Company Securities, Corp., through its General Counsel and Director of Compliance, Susan M. Boudrot, Esq., maintained that Brown & Company gives no investment advice to customers. Brown & Company further maintained that claimant Dennis Doane was a sophisticated trader who owned shares of Bio Pharmaceuticals which had a symbol of BIOP. Brown & Company also maintained that the year high for Bio Pharmaceuticals was \$0.55 per share. Brown & Company averred that on April 30, 1996 Bio Pharmaceuticals changed its symbol from BIOP to BOPH since the BIOP symbol had been given to BIOPSYS Medical. Brown & Company indicated that BIOP, formerly BIOPSYS Medical had a price in excess of \$18 per share. Brown & Company maintained that due to clerical error the symbol was not adjusted until May 3, 1996.

Brown & Company further maintained that Doane knew that the price which was quoted to him was well above the price at which BIO Pharmaceuticals was trading, since Doane had checked the quote at least two times on May 1, 1996 and once, on May 2, 1996. Brown & Company asserted that on May 2, 1996, Doane (1) placed an order to sell BIOP (2) called DirectLine and received confirmation for the sale of 5000 BIOP at \$18 1/2 and (3) received verbal confirmation from Brown & Company of execution of 5000 shares of BIOP at \$18 1/2. Brown & Company further asserted that since Doane did not own BIOP (formerly BIOPSYS Medical), the sale created a short position in the account. Brown & Company also asserted that (1) on May 3, 1996 it was not able to reach Doane during market hours to notify him of the problem, (2) on the afternoon of May 3, 1996, when it became apparent that Doane could not be reached before the market closed, it covered the short position by buying back the 5000 shares of BIOP (formerly BIOPSYS Medical) at the market price of \$20 3/4 and notified Doane of the buy. Brown & Company contended that Doane is not entitled to compensation since he knew that he owned a penny stock and sought to take advantage of their clerical error.

RELIEF REQUESTED

Claimants N. Dennis Doane and Robin Doane requested \$10,000 in actual damages.

Respondent Brown & Company Securities, Corp., requested that it not be held liable for claimants' loss.

AWARD

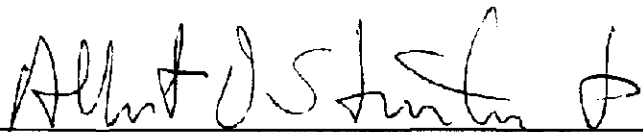
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Albert D. Sturtevant, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants N. Dennis Doane and Robin Doane on July 1, 1996 and by Respondent Brown & Company Securities, Corp., on August 26, 1996.

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. Respondent Brown & Company Securities, Corp., is liable and shall pay to the claimants N. Dennis Doane and Robin Doane, \$5,625.00 in actual damages.
2. All other relief requests are denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants N. Dennis Doane and Robin Doane shall be retained by the NASD Regulation, Inc. Respondent Brown & Company Securities, Corp., is liable and shall pay to the Claimants N. Dennis Doane and Robin Doane \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **ALBERT D. STURTEVANT, 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 14, 1997