



Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:
Edwina Von Jagla, Claimant vs. David Noyes & Company and Gregory Keith,
Respondents.

Case Number: 99-01194

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant, Edwin Von Jagla hereinafter referred to as "Claimant", was represented by Sean Greenwood, Esq. of Robins Cloud, Greenwood & Lubel, LLP, Houston TX.

Respondents, David Noyes & Company and Gregory Keith hereinafter collectively referred to as "Respondents" were represented by David Genelly, Esq. of Vanasco, Wayne & Genelly, Chicago, IL.

CASE INFORMATION

Statement of Claim filed on or about: March 15, 1999.

Claimant filed an Amended Statement of Claim on December 4, 2000.

Claimant signed the Uniform Submission Agreement on February 25, 1999.

The Statement of Answer was filed by Respondents, on or about: July 20, 1999.

CASE SUMMARY

Claimant asserted the following causes of action:

- 1.) Negligence and Gross Negligence of Noyes & Company in its alleged failure to train and supervise its employees;
- 2.) Vicarious liability for the actions of its employees;
- 3.) Negligence and Gross Negligence of Gregory Smith due to his failure to make suitable investment decisions on behalf of Claimant;
- 4.) Violation of Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code, Section 17.41, ET. Seq.;
- 5.) Violation of the Blue Sky Law;
- 6.) Violations of Federal Securities Laws: section 12(2) of the Securities Act of 1933, 15 U.S.C. Section 77a, ET. Seq. as well as Rule 10b-5;
- 7.) Breach of Fiduciary Duty;
- 8.) Churning;
- 9.) Violation of Maryland Securities Act;

All of these allegations are in connection with the purchase and sale of securities for Ms. Von Jagla's account.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and requested that Claimant be denied any recovery.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$250,000.00
Punitive Damages	\$250,000.00
Attorneys' Fees	\$165,00.00
Pre-judgment interest	\$ Unspecified
Post-judgment interest	\$ Unspecified

Respondents requested that the allegations contained in the Statement of Claim be dismissed.

AWARD

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

1. Respondents David Noyes & Company and Gregory Keith are jointly and severally liable for and shall pay to Claimant the sum of \$68,716.72 plus interest at the rate of 10%. Said interest shall accrue from March 1, 1998 and will cease to accrue upon payment of the award.
2. If the amount awarded is not paid in full within 30 days of service of the award, interest on the award shall accrue at the rate of 18% per annum until the sum is paid in full.
3. The parties shall bear their own costs of arbitration, including attorneys' fees except for those specifically enumerated herein.
4. Any and all relief not specifically addressed herein, including punitive Damages, is denied.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the code and having answered the claim, appeared

and testified at the hearing are bound by the determination of the Panel on all submitted issues.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee
= \$200

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party / the Respondent's firm, Davis Noyes & Associates:

Member surcharge	= \$1500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$ 2,500

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Dates of 4/17/2000 to 4/20/ 2000 were adjourned by party request of the Respondents.
= \$ 750 (Fee Waived)

Hearing Dates of 9/26/200 to 9/ 28/ 2000 were adjourned by request of the Respondents.
= \$1000 (Fee Waived)

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with single Arbitrator x \$ 300	= \$300
Pre-hearing Conference: March 22, 2000	

One (1) Pre-hearing session with a Panel x \$750	= \$750
Pre-hearing conference: October 13, 1999	

Von Jagla v. Noyes et al
NASD-DR #99-01194
Pg. 4 of 4

Four (4) Hearing sessions x 750		= \$3000
Hearing Date(s):	December 20, 2000	2 sessions
	December 21, 2000	2 sessions
Total Forum Fees		= \$4050

The Panel has assessed \$4050 of the forum fees to the Respondents *jointly and severally*.

Fee Summary

1. Claimant be and hereby is solely liable for:

Hearing Session Deposit	= \$ 200
Total Fees	= \$ 200
<u>Less payments</u>	<u>= \$ 950</u>
NASD Dispute Resolution, Inc. has refunded	= \$ 750

3. Respondent, David Noyes & Co. be and hereby is solely liable for:

Member Fees	= \$ 4600
Adjournment Fees	= \$ 1750 (Waived)
Total Fees	= \$ 4600
<u>Less payments</u>	<u>= \$ 5600</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 3050

4. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$4050</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4050

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature(s)

Charles Powell, Esq.
Public Arbitrator, Presiding Chair

March 22, 2001
Signature Date

Michael McGowan
Public Arbitrator

Signature Date

Nick Sacaris
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Von Jagle and Noyes et al

NASD Dispute Resolution

Pg. 4 of 4

Four (4) Hearing sessions x 750		= \$3000
Hearing Date(s):	December 20, 2000	2 sessions
	December 21, 2000	2 sessions
Total Forum Fees		= \$4050

The Panel has assessed \$4050 of the forum fees to the Respondents *jointly and severally*.

Fee Summary

1. Claimant be and hereby is solely liable for:

Hearing Session Deposit	= \$ 200
Total Fees	= \$ 200
Less payments	= \$ 950
NASD Dispute Resolution, Inc. has refunded	= \$ 750

3. Respondent, David Noyes & Co. be and hereby is solely liable for:

Member Fees	= \$ 4600
Adjournment Fees	= \$ 1750 (Waived)
Total Fees	= \$ 4600
Less payments	= \$ 5600
Balance due to NASD Dispute Resolution, Inc.	= \$ 3050

4. Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4050
Balance Due NASD Dispute Resolution, Inc.	= \$4050

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature(s)

Charles Powell, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Michael McGowan
Public Arbitrator


Signature Date

Nick Sacaris
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Four (4) Hearing sessions x 750		= \$3000
Hearing Date(s):	December 20, 2000	2 sessions
	December 21, 2000	2 sessions
Total Forum Fees		= \$4050

The Panel has assessed \$4050 of the forum fees to the Respondents **jointly and severally**.

Fee Summary

1. Claimant be and hereby is solely liable for:

Hearing Session Deposit	= \$ 200
Total Fees	= \$ 200
<u>Less payments</u>	= \$ 950
NASD Dispute Resolution, Inc. has refunded	= \$ 750

3. Respondent, David Noyes & Co. be and hereby is solely liable for:

Member Fees	= \$ 4600
Adjournment Fees	= \$ 1750 (Waived)
Total Fees	= \$ 4600
<u>Less payments</u>	= \$ 5600
Balance due to NASD Dispute Resolution, Inc.	= \$ 3050

4. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$4050
Balance Due NASD Dispute Resolution, Inc.	= \$4050

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature(s)

Charles Powell, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael McGowan
Public Arbitrator

Signature Date


Nick Sacaris
Industry Arbitrator

March 19, 01
Signature Date

Date of Service (For NASD-DR office use only)