

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

-----  
In the Matter of the Arbitration Between )  
CAROL RUTBERG, )  
Claimant, )  
vs. ) Case #89-00096  
STUART JAMES COMPANY, INC., ) Award  
Respondent. )  
-----

Heard before the members of the Arbitration Panel:

Mr. Roger C. Benson  
Allan J. Fedor, Esq.  
Mr. Willard E. Fawcett

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 9, 1989. The hearing was conducted in Tampa, Florida on December 14, 1989 with a total of two (2) sessions.

Claimant Carol Rutberg ("Rutberg") alleged that Respondent Stuart James Company, Inc. ("Stuart James") was liable for: misrepresentation; negligence; and placing her in unsuitable securities. Specifically, Claimant alleged that Respondent's employee misrepresented the potential profits she could expect and failed to take her out of the market as she had instructed. Respondent alleged that: the statements which were allegedly made merely expressed the employee's opinion and were not actionable; Claimant's reliance on such statements was not reasonable; Claimant was suitable for the transactions; there is no private right of action for unsuitability; Claimant never mentioned her desire for income; Claimant failed to set forth facts sufficient to state a claim for negligence; and Claimant's conduct was contrary to her contention that she instructed Respondent's employee to take her out of the market.

RELIEF REQUESTED

Claimant requested damages in the amount of \$29,346.00 inclusive of interest, attorney's fees and other costs. Respondent requested dismissal of the claim.

AWARD

On December 14, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 16, 1988, and by Respondent on February 24, 1989. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondent Stuart James is hereby liable and shall pay to Claimant the amount of Twenty Seven Thousand Eight Hundred Forty-Four and 00/100 (\$27,844.00) inclusive of interest at the legal rate of 12% per annum.
3. Respondent Stuart James is hereby liable and shall pay to Claimant the further amount of One Thousand Nine Hundred and 00/100 (\$1,900.00) Dollars for costs.
4. Respondent Stuart James is hereby liable and shall pay to the Claimant the further amount of Seven Thousand and 00/100 (\$7,000.00) Dollars for attorney's fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Respondent Stuart James forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400 X 2 sessions), Four Hundred and 00/100 (\$400.00) Dollars of which shall be paid directly to the Claimant and Four Hundred and 00/100 (\$400.00) Dollars of which shall be paid to the NASD, Inc. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

Mr. Roger C. Benson  
Allan J. Fedor, Esq.  
Mr. Willard E. Fawcett

Dated: January 4, 1990