

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
Suite 1680  
Three First National Plaza  
Chicago, IL 60602  
(312) 899-4440

In the Matter of the Arbitration Between

Name of Claimant(s)

Peggy Boerner

89-00947

Name of Respondent(s)

Stuart James Company, Inc.  
and Gary Pierce

CASE SUMMARY

In a Statement of Claim filed with the NASD on March 28, 1989, as amended on July 18, 1989 and October 16, 1989, Claimant Peggy Boerner alleged that Respondents engaged in unauthorized transactions in her common stock account, misrepresented the returns on her investments and misstated the transaction on her income tax statements. The Statement of Claim alleged breach fiduciary duty; breach of contract; misrepresentations of the nature of the investment and the losses incurred; omission to state the speculative nature of the stocks; fraud; reckless management by Respondent Stuart-James, and actions under respondent superior and agency against Respondent Stuart James.

In a Statement of Answer filed with the NASD on January 17, 1990, Respondent Stuart James Company, Incorporated denied all allegations of wrongdoing on its behalf, stating that the investments were suitable based on the information on the "new account data sheet"; Claimant failed to notify Respondent Stuart-James of the alleged unauthorized transactions; Claimant was aware of the nature of her investments; and that any losses incurred on here income tax was outside the scope of Respondent Pierce's employment with Stuart-James.

RELIEF REQUESTED

The Claimant requested that an award be entered against Respondents for \$33,115.82, statutory interest of 8%, attorneys' fees and costs.

The Respondent requested that all of Claimant's claims for relief be denied in their entirety and for such other relief as is justified.

**NASD**

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**AWARD**

On October 22, 1990 and October 23, 1990, in Denver, Colorado during a hearing lasting four sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 11, 1989 by Claimant Peggy Boerner and on January 12, 1990 by Marc N. Gorman on behalf of Respondent The Stuart-James Company Incorporated. Respondent Gary Pierce was not served with the Statement of Claim.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Stuart-James Company, Incorporated is liable for and shall pay to Claimant Peggy Boerner the sum of \$14,300.00 plus post-judgment interest of 8% per annum from ten days after the award is served on Respondent until payment is made.


2. Each party shall bear there own costs, including attorneys' fees, except for those enumerated herein.

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$400.00 filing fee previously deposited with the NASD by the Claimant Peggy Boerner. Claimant Peggy Boerner is liable for and shall pay additional forum fees to the NASD in the amount of \$400.00. Respondent Stuart James Company Incorporated is liable for and shall pay to the NASD additional forum fees of \$800.00.

By the Panel

Dated: 1-4-91

/S/

  
Robert H. Duggan, Jr., Esq.  
Presiding Chair

Dated: \_\_\_\_\_

/S/

Bruce W. Brady, C.P.A.

Dated: \_\_\_\_\_

/S/

John H. Barton

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By the Panel

Dated: \_\_\_\_\_

/s/

Robert H. Durham, Jr., Esq.  
Presiding Chair

Dated: \_\_\_\_\_

/s/

Bruce W. Brady, C.P.A.

Dated: 1-3-90

/s/

John H. Barton  
John H. Barton

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By the Panel

Dated: \_\_\_\_\_

/S/

Robert H. Durham, Jr., Esq.  
Presiding Chair

Dated: 12-19-90

/S/

  
Bruce W. Brady, C.P.A.

Dated: \_\_\_\_\_

/S/

John H. Barton