

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between  
JAN SCHMITZ  
v.  
STUART-JAMES COMPANY, INC.  
Claimant  
Respondent  
NASD No. 89-01891

### CASE SUMMARY

In a claim filed with the NASD on or about June 30, 1989, Claimant Janice Schmitz ("Schmitz") alleged that Respondent Stuart James Company, Inc. ("Stuart James") violated the New Mexico Securities Act engaged in unfair trade practices, fraud, breach of fiduciary duty and conversion. Schmitz alleged that Stuart James made an unauthorized trade in her account and failed to promptly close her account upon request.

Stuart James alleged that there were no unauthorized trades and alleged that market forces together with Schmitz's investment decisions were the direct and proximate cause of losses incurred in her portfolio.

RELIEF REQUESTED

Schmitz requested damages of \$8,942.18, costs, attorneys' fees and punitive damages. Stuart James requested dismissal of the claim.

**AWARD**

On April 10, 1990 in Albuquerque, New Mexico, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on July 28, 1989 by Claimant Janice K. Schmitz and on October 6, 1989 by Marc N. Geman on behalf of Respondent the Stuart James Co., Inc.

The arbitrator, 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. Stuart James is liable for and shall pay to Schmitz the sum of Four Thousand Two Hundred Seventy-six Dollars and Eighty-four Cents (\$4, 276.84) inclusive of interest;

2. No punitive damages are awarded;

3. The parties' shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$200.00 filing fee previously deposited with the NASD by the Claimant. Respondent Stuart-James Company, Inc. is assessed and shall pay to the NASD as costs of this proceeding \$200.00.

PRESIDING ARBITRATOR

Dated: 5-4-90

S/S Ross B. Perkal  
Ross B. Perkal, Esq.