

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

W. Paul Ayers, Jr.  
Glen A. Koehler

89-02038

~~89-02038~~

Name of Respondent(s)

Barrington Nugent  
Stuart James Company, Inc.  
Stuart Graff  
James W. Padgett  
Michael Oliva

MAR 2  
ARBITRATION-CHICAGO

CASE SUMMARY

W. Paul Ayers and Glen A. Koehler ("Claimants") alleged that:

1. Barrington Nugent ("Nugent"), a registered representative of Stuart-James Company, Inc. ("Stuart-James") engaged in the following:
  - a. made misrepresentations and omissions of material facts regarding RexCom Systems, Corporation; International Microcomputer Software, Inc.; Protein Database, Inc.; and Systems Wests Inc.;
  - b. made unauthorized trades in the claimants' accounts;
  - c. and breached his fiduciary duty to the Claimants as did Stuart James by failing to use due care in managing their accounts.
2. Stuart-James and Michael Oliva ("Oliva"), branch manager for Stuart-James, failed to properly supervise Nugent.
3. Stuart-James and Nugent failed to properly disclose Stuart-James interest in transactions including their market maker status and mark-up.
4. Stuart-James sold Rexcom to the Claimants which was not properly registered.
5. Stuart James, Nugent, Oliva engaged in a fraudulent scheme to defraud the Claimants in violation of 10(b) of the Securities and Exchange Act of 1934, Rule 10 b-5 promulgated there under, Illinois Securities Law and common law fraud.

Nugent failed to answer the claims of the Claimants, Oliva denied the claim that he failed to properly supervise Nugent. Stuart James denied all the claims of the Claimants and further alleged as follows:

1. The Claimants authorized and/or were notified of all transactions;
2. The Claimants were aware of all the material risks regarding the transactions and assumed these risks;
3. Stuart-James disclosed its interest as a market maker thereby fulfilling its requirements under the law;
4. No fiduciary duty existed between the parties since the Claimants maintained non-discretionary accounts;
5. And the transactions of which the Claimants complain were consistent with their previous trading patterns.

#### RELIEF REQUESTED

In their Statement of Claims the Claimants requested the following:

W. Paul Ayers

- Compensatory damages \$19,502.00
- Punitive damages
- Interest
- Costs and Attorney's fees
- A declaration that certain sales are void

Glen A. Koehler

- Compensatory damages \$25,000
- Punitive damages
- Interest
- Costs and Attorney's fees

#### OTHER ISSUES

In a prehearing conference a panel ordered the consolidation of the Claimants claims over the objection of Stuart James. In that same conference the panel was notified that the Claimants and Messrs. Padgett and Graff, principals of Stuart James, had agreed to dismiss their respective claims against one another which was approved by the panel. Subsequently, the Claimants moved to reinstate Messrs. Padgett and Graff and this motion was denied as was the motion to reconsider.

#### PROCEDURAL MATTERS

On February 14 and 15, 1990 in Chicago, Illinois during a hearing lasting a

total of six (6) sessions, including two (2) pre-hearing conferences, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 7, 1989 by W. Paul Ayers and by Glen A. Koehler on July 7, 1989, on September 12, 1989 by Marc W. Samur on behalf of Respondent Stuart-James. Nugent failed to answer the Statement of Claims which were served upon him by the NASD at the address stated on Central Registration Depository ("CRD"). The panel determined that Nugent was subject to this arbitration and bound by its determination.

Respondent Mike Oliva did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

#### AWARD

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. All of the Claimants claims asserted against Oliva are dismissed.
2. Respondents Stuart James and Nugent are jointly and severally liable for and shall pay to W. Paul Ayers \$14,536.21, which includes interest from December 14, 1989 to February 15, 1991, plus interest at the rate of 8% per annum from February 16, 1991 until paid. Ayers shall transfer and assign to Stuart James 550,000 shares of Raxcom Systems Corp. and 20,000 shares of International Microcomputer Software, Inc.
3. Respondents Stuart James and Nugent are jointly and severally liable for and shall pay to Glen A. Koehler \$25,207.91, which includes interest from December 14, 1989 to February 15, 1991, plus interest from February 16, 1991 at the rate of 8% per annum until paid.
4. Nugent shall pay punitive damages in the sum of \$7,268.11 to Ayers and \$12,603.94 to Koehler.
5. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter not specifically enumerated herein; and
6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by Claimant W. Paul Ayers and the hearing session deposit in the amount of \$300.00 previously deposited with the NASD

by Glen Koehler. Each claimant shall pay to the NASD the sum of \$300.00 as forum fees. Respondents Stuart-James and Nugent shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,200.00 as forum fees.

Arbitrators concurring:

Dated:

\_\_\_\_\_

\_\_\_\_\_  
Arthur Meadow, Esq.  
Presiding Chair

\_\_\_\_\_

\_\_\_\_\_  
Lynn P. Cohn, Esq.

3/20/91

  
\_\_\_\_\_  
James L. Schwartz, Esq.  
Industry Arbitrator

James L. Schwartz, Esq.  
Industry Arbitrator

by Glen Koehler. Each claimant shall pay to the NASD the sum of \$300.00 as forum fees. Respondents Stuart-James and Nugent shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,200.00 as forum fees.

Arbitrators concurring:

Dated:

\_\_\_\_\_

Lynn P. Cohn Esq.

\_\_\_\_\_

\_\_\_\_\_  
Arthur Meadow, Esq.  
Presiding Chair

\_\_\_\_\_  
Lynn P. Cohn, Esq.

\_\_\_\_\_  
James L. Schwartz, Esq.  
Industry Arbitrator