

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

George Fauser)

Case No. 89-02431

Name of Respondent(s))

Stuart James Company, Inc.)

David Weintraub)

David Harrington)

REPRESENTATION

For Claimant, George Fauser ("Fauser"): Michael Addison, Esq. of Dykema Gossett.

For Respondent, Stuart James & Co., Inc. ("Stuart James"): Christa Taylor, Esq. of Hart & Trinen.

Respondent, David Weintraub ("Weintraub") was pro se subsequent to the withdrawal of Christa Taylor, Esq. due to Stuart James' Bankruptcy.

Respondent, David Harrington ("Harrington"): pro se.

CASE INFORMATION

Statement of Claim filed: August 29, 1989. Claimant's Submission Agreement signed: August 22, 1989.

Respondents' Stuart James and Weintraub's Statement of Answer filed: December 4, 1989. Respondents' Submission Agreements signed by Weintraub on December 1, 1989, and by Marc Geman on behalf of Stuart James on December 1, 1989.

Respondent, Harrington, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code. Respondent, Harrington, being an associated person with an NASD member firm at the time this controversy arose.

HEARING INFORMATION

On October 5, 1990, in Tampa, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call without an arbitrator.

On October 23, 1990, in Tampa, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On November 13, 1990 and November 25, 1991, in Tampa, Florida, hearings lasting three (3) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for: misrepresenting the safety and potential profitability of certain stock; unauthorized trading; negligence; inducing Claimant into purchasing certain stock which was unsuitable in light of Claimant's investment objectives and financial situation; breach of fiduciary duty; fraud; breach of duty to use reasonable care; churning; and, as it relates to Stuart James, negligent supervision.

Respondents, Stuart James and Weintraub, denied liability and alleged that: Claimant was informed of all risks involved; Claimant was provided with a prospectus; all trades were authorized; any trades alleged to have been unauthorized were cancelled at no cost to Claimant; and Claimant was suitable for the investments. Respondents asserted affirmative defenses including; failure to state a claim; failure to mitigate damages; waiver; estoppel; laches; statute of limitations; and, failure to plead fraud with sufficient particularity.

Stuart James and Weintraub asserted a cross claim against Respondent, Harrington, for indemnification and attorney's fees.

Respondent, Harrington, failed to file an answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in the amount of \$48,067.38, plus interest.

Respondents, Stuart James and Weintraub, requested dismissal of the claim and cross claimed against Respondent, Harrington, for indemnification and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Pursuant to the involuntary bankruptcy filing against Respondent, Stuart James, dated October 18, 1991, the claims against Stuart James were stayed and Stuart James was dismissed, without prejudice in accordance with the provisions of the Bankruptcy Code.
2. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure and pursuant to the Form U-4 executed by Respondent, Harrington.
3. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service upon and adequate notice to Respondent, Harrington. The NASD has made every attempt to locate and serve Respondent, Harrington, with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

4. The Claimant and Respondents, Weintraub and Stuart James, have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case these parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and Respondent, Harrington neither appearing at the hearing nor requesting an adjournment thereof, notwithstanding his knowledge of this arbitration as evidenced in the record of proceeding, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Weintraub, is found liable and shall pay to the Claimant the amount of \$5,132.94, plus interest in the amount of \$2,771.79 for a total due to the Claimant of \$7,904.73.
2. Respondent, Harrington, is found liable and shall pay to Claimant the amount of \$13,867.06 plus interest in the amount of \$7,488.21 for a total due to the Claimant of \$21,355.27.
3. Respondents, Weintraub and Harrington, are also found liable, jointly and severally, and shall pay to Claimant the further amount of \$13,867.06 plus interest in the amount of \$7,488.21 for a total due to the Claimant of \$21,355.27.
4. Respondent, Harrington, is found not liable to Cross Claimants, Stuart James and Weintraub, and, therefore, the cross claim against him is hereby dismissed.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (one pre-hearing conference x \$300.00 plus three sessions x \$400.00). Respondents, Weintraub and Harrington are hereby assessed \$1,500.00, jointly and severally, \$280.00 of which shall be paid directly to the Claimant, and \$1,220.00 of which shall be paid to the National Association of Securities Dealers, Inc. Additionally, Respondents, Weintraub and Harrington, are hereby assessed, jointly and severally, the \$120.00 filing fee payable directly to Claimant. The NASD shall retain the \$120.00 filing fee and the \$280.00 hearing session deposit paid by the Claimant in partial satisfaction of such fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

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George Felos, Esq.

Public

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William G. Kline

Public

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Stephen P. Savitt

Industry

Date of Decision: February 13, 1992