

Phillip E. Ratcliffe

**CASE #89-02832**  
**AWARD**

The Stuart-James Co., Inc.  
David Weintraub  
Christopher Joseph Noble  
Rick Freuh

**Respondents :**

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In a claim filed with the National Association of Securities Dealers, Inc. on October 13, 1989, Claimant Phillip E. Ratcliffe alleged the Respondents, The Stuart-James Co., Inc., David Weintraub, Christopher Joseph Noble and Rick Freuh failed to effect Claimant's stop loss orders, breached their fiduciary duty to Claimant, fraudulently induced Claimant to purchase securities by falsely representing that Claimant's account had earned substantial profits, failed to liquidate Claimant's account and failed to exercise proper supervision over the broker in charge of Claimant's account. Claimant further alleged the Respondents charged him excessive commissions and retained for itself profits on transactions it executed in Claimant's account. Respondents maintained David Weintraub specifically advised the Claimant that stop/loss orders were not permitted by Stuart-James Co., Inc. so Claimant knew or had reason to know that no stop/loss orders were in effect on his securities. Respondents further maintained they did not breach the fiduciary duty owed to the Claimant as each and every one of the trades executed in Claimant's account was done with his express authorization and approval and no unauthorized trades took place in Claimant's account and no untrue statements concerning the Claimant's portfolio were made to the Claimant and the Respondents acted in good faith at all times. Respondents further maintained the Claimant's instructions to liquidate his account were deliberately vague and Respondents did not liquidate all of Claimant's portfolio within a two week period because the Claimant's express instructions to liquidate allowed Respondents between 30 to 90 days to do so. Respondents further maintained Claimant cannot be permitted to maintain a private right of action for violation of the NASD supervision rule and Claimant has not

alleged facts which would prove that Respondents Christopher Joseph Noble and Rick Freuh were primarily or secondarily liable. Respondents further maintained their pricing practices on the securities at issue were in all respects proper and consistent with industry custom and practice and any mark-ups or mark-downs which were charged did not exceed industry limitations or standards because the prices paid by Claimant never exceeded the "prevailing market price by more than 5% and Respondents disclosed all compensation information to Claimant which was required to be disclosed.

#### RELIEF REQUESTED

Claimant requested damages of One Hundred Eleven Thousand Six Hundred Eleven Dollars and Twenty-Six Cents (\$111,611.26) for losses sustained in his account, damages in an amount of no less than Seventy Thousand Dollars and No Cents (\$70,000.00) for unreasonable and excessive commissions, damages in an amount of no less than Ten Thousand Dollars and No Cents (\$10,000.00) for unauthorized and excessive trading profits plus any other relief to which Claimant may be properly entitled. Respondents requested dismissal of Claimant's claims in their entirety and for such further relief as is just.

#### AWARD

On September 13, 1990 & November 19, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Phillip E. Ratcliffe on October 11, 1989 and by Respondent, The Stuart-James Co., Inc. on January 2, 1990 and by Respondents David Weintraub, Christopher Joseph Noble and Rick Freuh on December 1, 1989. The hearing was conducted in Baltimore, MD and consisted of three hearing sessions. 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 Respondents, The Stuart-James Co., Inc., David Weintraub, Christopher Joseph Noble and Rick Freuh be and hereby are liable jointly and severally and shall pay to the Claimant the sum of Twenty Two Thousand Five Hundred Thirty Dollars and No Cents (\$22,530.00) inclusive of interest.
2. The parties shall each bear their respective costs including attorney's fees.

3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the One Thousand Dollar and No Cents (\$1,000.00) filing fee previously deposited by the Claimant. In addition, the Respondent, The Stuart-James Co., Inc. be and hereby is liable and shall pay to the NASD the sum of Two Thousand Dollars and No Cents (\$2,000.00) to represent forum fees.

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Charles E. Eby, Jr.

DATED:

12/18/90