

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert J. and Barbara J. Mrozak
Armen and Helen Markarian

Consolidated
89-02920 and
89-02849

Name of Respondent(s)

Stuart James Company, Inc.
Richard C. Whelan

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 16, 1989, Claimants Robert J. and Barbara J. Mrozak ("the Mrozaks"), alleged that Respondents Stuart James Company, Inc. ("Stuart James") and Richard C. Whelan ("Whelan") made unsuitable trades for their account and misrepresented the safety of the stocks traded for their account. The Mrozaks alleged that Whelan was aware that the majority of the funds in their account were IRA funds and that extreme care was to be exercised to prevent losses. The Mrozaks alleged that Whelan was instructed on numerous occasions to invest only in conservative investments with minimum risk. Whelan allegedly advised the Mrozaks to invest in IPO stock issues without disclosing the risks of this type of investment. The Mrozaks also alleged that Whelan made an unauthorized purchase of 40,000 NDIC which was finally reversed and that Whelan churned their account. The Mrozaks also alleged that Whelan acted irresponsibly in handling their IRA funds.

In a Statement of Answer to the Mrozak claim filed with the NASD on or about February 26, 1990, Stuart James and Whelan denied the allegations of the claims and alleged that the Mrozaks were sophisticated investors who understood the risks of purchasing speculative securities. Whelan and Stuart James denied that the Mrozaks instructed Whelan to invest their IRA funds in conservative issues and that the Mrozaks clearly knew based on their previous investment experience, that all purchases made in their accounts concerned speculative, low priced securities. Whelan and Stuart James alleged that the Mrozaks had previously traded options and penny stocks.

In a Statement of Claim filed with the NASD on or about October 16, 1989, Claimants Armen and Helen Markarian ("the Markarians") alleged that Whelan and Stuart James also misrepresented the safety of IPO stock issues. The Markarians alleged that they invested IRA funds with Whelan and Stuart James on the representation that they would realize a 30-40% annual return.

The Markarians alleged that their funds were to be invested in non-speculative long term growth securities.

In their answer to the Markarian claim filed with the NASD on or about April 9, 1990, Whelan and Stuart James also alleged that the Markarians were well acquainted with speculative penny stocks and options trading. Stuart James and Whelan denied the allegations of the claim and stated that The Markarians failed to mitigate their damage claims.

RELIEF REQUESTED

The Markarians sought damages of \$34,400.30 plus interest. The Mrozaks requested damages of \$31,682.58 plus interest. Stuart James and Whelan requested dismissal of the Claims.

PROCEDURAL MATTERS

The two arbitration claims were consolidated for hearing purposes.

AWARD

On February 26 and February 27, 1991 in Chicago, Illinois during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 16, 1990 by Claimants Arman and Helen Markarian, on February 2, 1990 by Claimants Robert and Barbara Mrozak, on February 22, 1990 by Marc N. Geman on behalf of Respondent Stuart James Company, Inc. and on January 22, 1990 by Respondent Richard C. Whelan.

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 originals remain on file with the NASD.

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. The Markarian's and the Mrozak's Statements of Claim are each denied and dismissed in their entirety;
2. Each party shall bear their own costs, expenses and attorneys' fees incurred in this matter; and

3. 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 \$400.00 previously deposited with the NASD by the Claimants Barbara and Robert Mrozak. The Mrozaks are assessed additional forum fees of \$320. The NASD retains the \$400.00 previously deposited by the Markarians and they are assessed additional forum fees of \$320. Stuart James, Inc. and Whelan are jointly and severally assessed additional forum fees of \$800.00. All forum fees are payable to the NASD.

Dated:

4/22/91

Panel Members Concurring

David Muschler

David Muschler, Esq.
Presiding Chair

Richard Zachary, Esq.

John E. Parkes, Jr.
Industry Arbitrator

Date Served by NASD: May 6, 1991

3. 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 \$400.00 previously deposited with the NASD by the Claimants Barbara and Robert Mrozak. The Mrozaks are assessed additional forum fees of \$320. The NASD retains the \$400.00 previously deposited by the Markarians and they are assessed additional forum fees of \$320. Stuart James, Inc. and Whelan are jointly and severally assessed additional forum fees of \$800.00. All forum fees are payable to the NASD.

Dated:

Panel Members Concurring

4/29/91

David Muschler, Esq.
Presiding Chair

Richard Zachary, Esq.

John E. Parkes, Jr.
Industry Arbitrator

Date Served by NASD: _____

3. 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 \$400.00 previously deposited with the NASD by the Claimants Barbara and Robert Mrozak. The Mrozaks are assessed additional forum fees of \$320. The NASD retains the \$400.00 previously deposited by the Markarians and they are assessed additional forum fees of \$320. Stuart James, Inc. and Whelan are jointly and severally assessed additional forum fees of \$800.00. All forum fees are payable to the NASD.

Dated:

Panel Members Concurring

David Muschler, Esq.
Presiding Chair

Richard Zachary, Esq.

John E. Parkes, Jr.
Industry Arbitrator

April 22, 1991

Date Served by NASD: _____