

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Sho Kou and Li Yang

CASE #90-00294

Name of Respondent(s)

Stuart James Company, Inc.
Joseph Ciccone

Heard before the members of the Arbitration Panel:

Name	Public/Industry
Robert Herschmann, Esq.	Public
Sterling F. Tremayne	Public
Leslie Bishop	Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 29, 1990. Claimants, Sho Kou ("Kou") and Li Yang ("Yang"), alleged that Respondents, Stuart James Co., Inc. ("Stuart James") and Joseph Ciccone ("Ciccone"), were liable for: fraud and deceit; breach of fiduciary duties; negligence; violations of Florida and Federal Securities Laws; and, as it relates to Stuart James, negligent supervision.

Claimants alleged that Ciccone purchased unsuitable penny stocks through the use of unauthorized discretion and that Respondents had a scheme to defraud Claimants.

In a Statement of Answer filed with the NASD on March 19, 1990, Respondents denied liability and alleged that Claimants: wanted to speculate; were informed of the risks involved; were suitable for these investments; ratified all trades by failing to object in a timely manner; failed to state a claim for relief under 10b-5; and failed to mitigate their damages.

RELIEF REQUESTED

Claimants requested: damages in the amount of \$23,914.90 plus punitive damages of \$20,000.00 plus interest, costs and attorney's fees. Respondents requested dismissal of the claim.

AWARD

On November 20, 1990, March 4 and 5, 1991, in Fort Lauderdale, Florida, during a hearing lasting six (6) sessions, with a prehearing conference on November 16, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, January 25, 1990 and signed by Marc Geman on behalf of Respondent, Stuart James on March 14, 1990 and signed by Respondent, Ciccone, on February 21, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The parties 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, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.
2. Respondents, Stuart James and Ciccone, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$3,788.75, plus interest at the legal rate of 12 per annum (from August 13, 1988 to March 13, 1991) in the amount of \$1,141.45 for a total due to the Claimants of \$4,930.20.
3. Claimants' request for attorney's fees, costs and punitive damages are denied.

FORUM FEES

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,700.00 (6 sessions x \$400 per session plus \$300.00 for prehearing conference on November 16, 1990). Claimants are hereby assessed \$1,350.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereto. Respondents, Stuart James and Ciccone, are hereby assessed \$1,350.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

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

Concurring Arbitrator(s) Signature

/s/
Robert Herschmann, Esq.

/s/
Sterling F. Tremayne

/s/
Leslie Bishop

DATE OF DECISION April 1, 1991