

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))

Jules Hochman, Individually and as)
Trustee of the Jules Hochman)
Revocable Trust)

Case No. 90-00406

Name of Respondent(s))

Stuart James Company, Inc.)
Herbert Robinson)

Heard before the members of the arbitration Panel:

Robert Herschmann, Esq.

Public

Sterling F. Tremayne

Public

Edward S. Boslow, III

Industry

REPRESENTATION

Claimant, Jules Hochman ("Hochman"), individually and as Trustee of the Jules Hochman Revocable Trust was represented by Russell L. Forkey, Esq. of Russell Forkey, P.A.

Respondents, Stuart James & Co., Inc. ("Stuart James") and Herbert Robinson ("Robinson"), were represented by Christa Taylor, Esq. of Hart & Trinen.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 8, 1990. Claimant alleged that Respondents were liable for: negligence; fraud; breach of fiduciary duties; and, as it relates to Stuart James, negligent supervision. Claimant alleged that Respondents misrepresented, among other things, the safety of investing in initial public offerings and of purchasing stocks on the secondary market; and that the investments recommended to, or purchased for, Claimant were unsuitable in light of Claimant's stated investment objectives of safety and income. Claimant also alleged that Respondents manipulated the market with respect to several issues.

In a Statement of Answer filed with the NASD on April 18, 1990, Respondents alleged that: Claimant's investment objectives were speculation and growth; Claimant was aware of the risks involved in purchasing penny stocks and received prospectuses on several issues; and otherwise denied that any

misrepresentations were made. Respondents also alleged that: Claimant has failed to state a claim under 10b-5; Respondents lacked intent to defraud; claims for failure to advise Claimant of cross trading are not actionable; the issue of unlawful mark-ups is not an appropriate subject for a private customer dispute; Respondents only duty was to refrain from unauthorized trades; and Claimant failed to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$33,243.75 plus interest, attorney's fees, costs and punitive damages of \$10,000.00.

Respondents requested dismissal of the Claim.

AWARD

On January 8 and 9 and June 6 and 7, 1991, in Fort Lauderdale, Florida, during a hearing lasting seven (7) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 5, 1990 and by Respondent, Robinson on March 12, 1990 and signed on April 6, 1990 by Marc Geman on behalf of Respondent, Stuart James.

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 originals remain on file with the NASD.
2. Respondent, Stuart James, is found liable and shall pay to the Claimant the amount of \$3,450.00.
3. Respondent, Robinson, is found liable and shall pay to the Claimant the amount of \$1,597.37.
4. Claimant's request for attorney's fees, costs and punitive damages is denied.

FORUM FEES

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,800.00 (7 sessions x \$400.00 per session). Claimant is hereby assessed \$1,400.00 for which the NASD shall retain \$280.00 of the \$400.00 previously deposited in partial satisfaction thereof. The balance of \$120.00 has been applied toward the non-refundable filing fee. Respondents, Stuart James and Robinson, are hereby assessed \$1,400.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

6. 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.

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/
Robert Herschmann, Esq.

/s/
Edward S. Boslow, III

/s/
Sterling F. Tremayne

Date of Decision: July 30, 1991