

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

American Financial Security Company, Inc.

and

90-00966

Name of Respondents

Securities Settlement Corporation
Robert M. Fehrman,
Silvestro F. Veneziano,
Jerome S. Stein, and
Westport Financial Group, Inc.

REPRESENTATION OF PARTIES

Claimant, American Financial Security Company, Inc. was represented by Timothy N. Vujnich, Esq. of Danis & Boyce, of St. Louis, Missouri.

Respondent, Securities Settlement Corporation was represented by Stephen P. Bedell, Esq. of Gardner, Carton & Douglas, of Chicago, Illinois.

Respondent, Jerome S. Stein appeared pro se.

Respondent, Robert M. Fehrman appeared pro se.

Respondent, Silvestro F. Veneziano appeared pro se.

Respondent, Westport Financial Group, Inc. was represented by Robert M. Fehrman.

CASE INFORMATION

The Statement of Claim was filed on April 2, 1990 by Claimant, American Financial Security Company, Inc.

Claimant's Submission Agreement was signed on March 28, 1990 by Victor E. Katt, President.

Statement of Answer and Motion to Dismiss Statement of Claim filed by Respondent, Securities Settlement Corporation on July 2, 1990.

Respondent, Securities Settlement Corporation's Submission Agreement signed on June 28, 1990 by Bernard L. Finger.

Statement of Answer filed by Respondent, Silvestro F. Veneziano on May 17, 1990.

Respondent, Silvestro F. Veneziano's Submission Agreement was signed on May 9, 1990.

Joint Statement of Answer filed by Respondents, Robert M. Fehrman and Westport Financial Group, Inc. on or about April 9, 1990 and Amended Answer filed on or after September 18, 1990.

No Submission Agreements were received for Respondent, Westport Financial Group, Inc. or Respondent, Robert M. Fehrman.

Respondent, Jerome S. Stein failed to file a written Answer or a Submission Agreement.

HEARING INFORMATION

The hearing was held on January 29, 1992 and January 30, 1992 in St. Louis Missouri for a total of Four (4) hearing sessions.

CASE SUMMARY

Claimant, American Financial Security Company, Inc. ("American Financial") alleged that it was Delaware Corporation with its principal place of business in the State of Missouri. American Financial alleged that it opened a brokerage investment account with Respondent Westport Financial Group, Inc. ("Westport") and Respondent Securities Settlement Corporation ("Securities Settlement") in April of 1989 for the purpose of selling 11,000 shares of the common stock of County Bancorporation ("Bancorp"). Respondent Jerome S. Stein ("Stein") was the individual investment broker assigned to American Financial's account.

American Financial alleged that it caused the 11,000 shares of the Bancorp stock to be deposited in the account with Westport and Securities Settlement. American Financial alleged that Westport and Securities Settlement knew or should have known that 10,000 of the 11,000 shares of Bancorp were pledged by American Financial to the First National Bank of Steelville, Illinois ("Steelville Bank") as collateral for a loan and that the proceeds from the sale were to be delivered to the Steelville

Bank payable jointly to American Financial and the Steelville Bank.

American Financial alleged that Stein recommended the purchase of certain common stocks which were allegedly safe, conservative investments, not at risk of loss. Stein allegedly recommended the purchase and the purchase of 5000 shares of Paramount Ventures and Finance, Inc. ("Paramount"), 5000 shares of Technigen Corp. ("Technigen") and the purchase of 75,000 shares of Orphan, Inc. ("Orphan"). The sales occurred on May 1, 1989, June 30, 1989 and July 5, 1989 respectively. American Financial alleged that these common stocks were not as represented by Stein, but were instead extremely risky and speculative "penny-stocks" which could readily decline in value.

American Financial also alleged that these stocks were unregistered in the State of Missouri pursuant to Mo. Rev. Stat. Section 409.101, et seq.. American Financial further alleged that Stein made unauthorized purchases of additional shares of common stock in Technigen and other so called penny-stocks including Security Environmental Systems, Inc. ("Security") and Aladin International, Inc. ("Aladin") in early July 1989 without the prior authorization of American Financial. These alleged unauthorized purchases came to the attention of American Financial when it received confirmations for the trades from Westport and Securities Settlement on July 7, 1989.

American Financial alleged that despite repeated assurances by Stein that these unauthorized trades would be rescinded, Westport and Securities Settlement refused to reverse the trades and that American Financial's account was debited to cover the purchase price of these unauthorized purchases of Aladin, Orphan, Paramount, Technigen and Security. Additionally, American Financial alleged that the proceeds from the sale of Bancorp were applied to these unauthorized purchases instead of being forwarded to the Steelville Bank as instructed by American Financial.

Further, Westport and Securities Settlement refused to rescind the purchases of the common stock of Aladin and Orphan which were acknowledged by Westport and Stein to be unregistered securities in the State of Missouri by letter dated September 8, 1989.

The foregoing allegations were alleged to constitute claims for recovery based upon breach of fiduciary duty, breach of contract, common law fraud, common law conversion, violation of the anti-fraud and registration provisions of the Missouri Uniform Securities Act, violation of Section 10(b) of The Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

Westport and Fehrman denied the allegations of the claim and asserted that the rescission offer was rescinded on October 30,

1989.

Veneziano also denied the allegations of the claim. .

Securities Settlement answered the claim and asserted that it should be dismissed from the proceeding because it was acting as a clearing broker for Westport and as such had no responsibility for the conduct of brokers for whom they clear transactions. Securities Settlement alleged that American Financial knew from the time it opened the account with Westport that Securities Settlement would only be clearing transactions and would not accept instructions from the customer or give the customer investment advice and that as a matter of law none of the factual allegations made in the statement of claim constituted a legal basis for recovery against Securities Settlement.

Securities Settlement asserted a Cross-Claim for indemnification against Stein, Veneziano, Fehrman and Westport in the event an Award was granted to American Financial.

Stein did not file a written answer to the claim.

RELIEF REQUESTED

American Financial requested an award, jointly and severally, against Westport, Fehrman, Veneziano, Stein and Securities Settlement for \$261,185.58 (\$87,061.86 trebled), plus interest at the rate of 8% from and after July 12, 1989, \$1,000,000 punitive damages and reasonable attorney's fees.

Securities Settlement requested dismissal of the Claim and an award on its Cross-Claim for indemnification, including costs and attorney's fees, against Veneziano, Stein, Fehrman and Westport in the event an award was rendered in favor of American Financial and against Securities Settlement.

Fehrman, Veneziano and Westport also requested dismissal of the Claim but did not answer the Cross-Claim of Securities Settlement.

Stein did not answer the Claim or the Cross-Claim.

OTHER ISSUES CONSIDERED & DECIDED

Stein did not appear at the hearing in St. Louis, Missouri on January 29, 1992. Stein telephoned the Adam's Mark Hotel, the hearing location and advised that he was ill and would not be in attendance on January 29, 1992 but would try to attend on January 30, 1992. The panel determined that Respondent Stein had been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Stein had received due

notice of the hearing as required under Section 26 of the Code in light of his telephone contact of January 29, 1992 and determined that arbitration of the matter would proceed in the absence of Stein pursuant to Section 29 of the Code.

Respondents Stein and Fehrman did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the Code and Fehrman having answered the claim and appeared at the hearing and Stein having appeared at the hearing on January 30, 1992, the panel determined that both Fehrman and Stein will be bound by the determination of the arbitration panel on all issues submitted.

The panel was advised that Westport filed a bankruptcy petition pursuant to Chapter 7, Title 11 of the United States Code pm or about June 15, 1990 in the United States Bankruptcy Court for the Eastern District of Missouri. Accordingly, the automatic stay provisions of the federal bankruptcy law are in effect as against Westport and American Financial is stayed from pursuing its claim against Westport.

Respondent, Fehrman requested that the panel consider a counterclaim against American Financial for abuse of process or malicious prosecution and requested waiver of the filing fee to pursue such a claim. The panel heard argument from the parties including an objection from American Financial that the pleading was untimely pursuant to Section 25 of the Code. The panel denied Fehrman's motion to add a counterclaim against American Financial pursuant to its authority under Section 39(b) of the Code.

The panel then took up the issue of Securities Settlement's request to file a trial brief in support of its Motion to Dismiss the claim against it as a matter of law pursuant to New York Stock Exchange Rule 382. The panel heard the argument of the parties and determined not to receive the written trial brief of Securities Settlement. The panel did allow Securities Settlement the opportunity to orally argue its motion and heard American Financial's oral argument in opposition. Veneziano and Fehrman also argued orally that Securities Settlement should be dismissed from the proceeding. After recess in executive session, the panel took Securities Settlement's motion under advisement until the close of Claimant, American Financial's evidence.

After Victor Katt finished his testimony on behalf of American Financial, Securities Settlement asserted another motion to dismiss the entire proceeding on the basis that American Financial had no standing to bring the action under Delaware law. The basis for the motion was that American Financial's corporate charter was revoked by the Delaware State authorities approximately one month prior to the filing of the statement of Claim in this matter. The panel entertained oral argument on the matter from counsel for Securities Settlement and counsel for

American Financial, reviewed certain caselaw and the statutes provided in support of the parties' respective positions. The panel entered executive session and then issued a ruling on the motion.

AWARD

After considering the pleadings, the testimony of certain parties at the hearing, the documentary evidence presented at the hearing and the parties' respective arguments and legal authorities on the motions to dismiss, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Securities Settlement's Motion to Dismiss the Claim of Claimant American Financial in its entirety for lack of standing under Delaware law is hereby sustained and the claim is dismissed with prejudice as to all named respondents;

2. The panel having dismissed the claim as indicated in paragraph one (1.) above, Respondent Securities Settlement's initial Motion to Dismiss Securities Settlement as a respondent as a matter of law pursuant to New York Stock Exchange Rule 382 having been taken under advisement by the panel at the outset of the hearing is hereby rendered moot;

3. The panel having dismissed the claim procedurally did not rule on the merits of Securities Settlement's cross-claim for indemnity against the other named respondents and said cross-claim shall be and is hereby dismissed as moot; and,

4. The parties shall each bear their own costs, expenses and attorney's fees incurred in the prosecution or defense of this matter.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$800.00 previously deposited with the NASD by the Claimant. The NASD shall also retain the \$500.00 claim filing fee and the hearing session deposit of \$250.00 previously deposited by Securities Settlement. Additional forum fees are assessed against Claimant in the amount of \$1450.00. Securities Settlement is assessed additional forum fees of \$500.00.

Forum fees are calculated at the rate of \$750.00 per hearing session times 4 hearing sessions for a total sum of \$3000.00.

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

Dated:

2-5-92

2-5-92

2-5-92

Panel Members Concurring

Gerald Cohen

Gerald Cohen
Presiding Chair
Public Arbitrator

Jack M. Chasnoff

Jack M. Chasnoff
Public Arbitrator

Edwin R. Cohen

Edwin R. Cohen
Industry Arbitrator

Date Award Served by the NASD _____