

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))

Nelson D. Brungart)
Charles D Brungart)

Case No. 90-02298

Name of Respondent(s))

Stuart James Company, Inc.)
Ben Silva)
John Beaird)

Heard Before the Arbitrator:

Casey Mills, Esq.

Public

REPRESENTATION

Claimants, Nelson D. Brungart and Charles D. Brungart ("Brungart"), were represented by Charles D. Brungart.

Respondent, Stuart-James, Inc. ("SJ"), was represented by John F. McBride, Esq., of Hart & Trinen, who appeared via speaker phone by leave of the Panel, over objection of Claimants. Respondents, Ben Silva and John Beaird, represented themselves but failed to appear at the hearing.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 20, 1990. Claimants alleged that Respondents recommended that Charles Brungart gift his account to Nelson Brungart for the purpose of purchasing new issues of stock in Florida because they were not permitted in Texas; that Respondents made unauthorized transactions in warrants and shares of penny stocks; made misrepresentations of and omitted to state material facts; and, churned Claimants' account.

Respondent, SJ, filed a Statement of Answer with the NASD on February 27, 1991. Respondents, denied all allegations of wrongdoing and alleged that Claimants could have purchased all securities in Texas; that all trades were authorized and ratified by Claimants; and, that Claimants are trying to recoup trading losses after the fact due to "buyers remorse".

Respondent, RJ, alleged the affirmative defenses of waiver, estoppel and ratification; failure to mitigate damages; and, bar by Claimants' own actions or inactions.

Respondent, Silva, filed a Statement of Answer with the NASD on February 25, 1991. Respondent denied all allegations of wrongdoing and alleged that he did not make any of the trades and that if Claimants had complained, he would know because of a financial penalty.

RELIEF REQUESTED

Claimants requested damages in the amount of \$10,000.00 and interest at SJ's money market rate.

Respondents requested dismissal.

AWARD

On July 25, 1991, in Fort Lauderdale, Florida, during a hearing lasting one (1) session the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Charles Brungart, on behalf of Nelson August 14, 1990 and March 1, 1991; by Charles, individually on July 25, 1991; by Respondent, Silva, on February 18, 1991; and signed on February 26, 1991 by C. James Padgett on behalf of Respondent, SJ; and, not signed by Beaird as required by Sections 12 and 25 of the Code.

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

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$200.00, (1 session x \$200.00 per session). Respondent, SJ, is hereby assessed \$200.00 payable directly to the Claimants. Respondent, SJ, shall pay to Claimants the additional amount of \$75.00 as reimbursement for Claimants' filing fee.

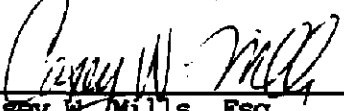
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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

OTHER ISSUES

Pursuant to the contents of the NASD file, the undersigned arbitrator finds that Respondents, Silva and Beaird, received actual notice of the hearing and service of the claim.

Arbitrator's Signature



Casey W. Mills, Esq.

Date of Decision: July 25, 1991