

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ted Bittner

90-03036

Name of Respondent(s)

The Stuart-James Company Incorporated  
Michael Reed Green

REPRESENTATION

For Claimant: Ted Bittner was represented by D. Craig Olivier, Esq. of Olivier & Steidley, Houston, Texas.

For Respondents: The Stuart-James Company Incorporated was represented by Christa D. Taylor, Esq. of Hart & Trinen, Denver, Colorado. Michael Reed Green appeared pro se.

CASE INFORMATION

Statement of Claim filed: October 29, 1990

Claimant's Submission Agreement signed on: October 25, 1990

Statement of Answer filed by Respondents Stuart-James Company Incorporated and Michael Reed Green on: April 1, 1991

Respondent Stuart-James Company Incorporated's Submission Agreement signed on: March 29, 1991 by C. James Padgett

Respondent Michael Reed Green's Submission Agreement signed on: April 3, 1991

HEARING INFORMATION

Hearing Dates/Sessions: August 9, 1991 for two (2) sessions  
September 30, 1991 for two (2) sessions

Hearing Location: Houston, Texas

CASE SUMMARY

Claimant Ted Bittner ("Bittner") alleged that Respondent Michael Reed Green ("Green"), while employed by or acting as agent for Respondent Stuart-James Company Incorporated ("Stuart-James"), engaged in the following acts:

1. Made unauthorized purchases of common stock in Continental Ventures, Inc., Independent Air Holdings, Inc. and Universal Medical Building Ltd. Partnership Units;
2. Failed to provide a prospectus for new stock issues purchased for Bittner;
3. Failed to provide bid/ask prices on certain stocks when requested by Bittner; and
4. Omitted and failed to inform Bittner of the risks of trading in Continental Ventures, which was a new company and first issue, and failed to inform Bittner that Stuart-James was a market maker in the stock.

Respondents Stuart-James and Green denied the material allegations of the Statement of Claim, alleging that: 1) Bittner is only complaining regarding those trades in which he miscalculated and lost money; 2) Bittner received all confirmations and monthly statements and failed to complain about the unauthorized purchases; 3) None of the purchases made by Bittner required delivery of a prospectus; 4) All bid/ask prices were provided and the information is public knowledge; and 5) All confirmation slips contained the information that Stuart-James was a market-maker in the stocks. In addition, the following affirmative defenses were alleged:

1. Bittner fails to state a claim upon which relief may be granted;
2. The Claims are barred by the applicable statutes of limitations and the doctrines of ratification, waiver, estoppel and laches;
3. The Claims are barred by Bittner's failure to object within 10 days receipt of the confirmations;
4. Bittner's damages are due to unforeseeable market conditions; and
5. Bittner failed to mitigate damages.

#### RELIEF REQUESTED

Claimant Ted Bittner requested entry of an award against Respondents in the sum of \$47,868.00 plus \$3,720.00 for interest paid to date on monies borrowed from a banking institution to cover a loan on the stock purchases.

Respondents Stuart-James Company Incorporated and Michael Reed Green requested that the Statement of Claim be dismissed and denied in its entirety.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned 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. Respondents Stuart-James Company Incorporated and Michael Reed Green are jointly and severally liable for and shall pay to Claimant Ted Bittner the sum of \$20,000.00;
3. Parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 Claim Filing Fee and refund the \$400.00 hearing session deposit previously deposited by the Claimant Ted Bittner. Respondent Stuart-James Company Incorporated is liable for and shall pay to the NASD forum fees in the sum of \$1,600.00.

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

**BY THE ARBITRATION PANEL**

Arbitrators' Signatures:

Dated:

Cynthia J. Thomson  
Cynthia J. Thomson, Esq.  
Chairperson  
Public Arbitrator

October 21, 1991

Charlotte F. Simpson  
Charlotte F. Simpson  
Public Arbitrator

October 15, 1991

William J. Haskins  
William J. Haskins, Esq.  
Industry Arbitrator

October 18, 1991

Date Served: \_\_\_\_\_