

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Harry Friedman

90-03073

Name of Respondents

Stuart James Company, Inc.  
Robert Allan Magnan

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REPRESENTATION

For Claimant: Renan I. Sugarman, Esq. of Fishman & Merrick, Chicago, Illinois.

For Respondent Stuart James & Co.: John F. McBride, Esq. of Hart & Trinen, Denver, Colorado.

For Respondent Robert Allan Magnan: Clifford J. Hunt, Esq. of Riden, Earle & Kietner, P.A., St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed: October 31, 1990.

Claimant's Submission Agreement signed on: October 25, 1990 by Claimant Harry Friedman.

Statement of Answer filed by Respondent, Stuart James & Co., Inc. on: February 11, 1991.

Respondent, Stuart James & Co., Inc.'s Submission Agreement signed on: February 7, 1991 by Marc N. Geman.

Respondent Robert Allan Magnan did not file either an Answer to the Claim or a properly executed Uniform Submission Agreement.

### HEARING INFORMATION

Hearing Dates/Sessions: Monday, August 26, 1991 during a hearing lasting one session.

Hearing Location: Chicago, Illinois

### CASE SUMMARY

Claimants, Harry Friedman ("Claimant") alleged breach of contract, breach of fiduciary duty, common law fraud, violation of Section 10-b of the Securities and Exchange Act of 1934, violations of Article III, Section 2 of the NASD Rules of fair Practice, breach of implied duty of good faith and fair dealing and negligence. Claimant asserted the foregoing causes of action against Respondents Stuart James & Co, Inc. ("Stuart James") and Robert Allan Magnan ("Magnan") in connection with the purchase of common stock in C M Communications (CMC). Claimant alleged that Magnan called him touting CMC stock and requested that Claimant could make a substantial profit of a minimum of 25% in a very short time of six weeks. Claimant alleged that he agreed to purchase the stock because Magnan guaranteed that he would not lose any of his money and that Magnan agreed to immediately liquidate the position in CMC stock if the stock dropped in price \$1.00 per share. Claimant alleged that Magnan promised to monitor the stock and that a six week time period elapsed during which the stock dropped below the share price at which Magnan agreed to sell the stock. Magnan did not sell the CMC stock during this period. Magnan allegedly convinced Claimant to keep the stock in his portfolio and represented that the CMC stock would be sold if the share price dropped to \$6.75. Claimant alleged that the price of the stock dropped to below \$1.00 per share and again Magnan did not sell the CMC stock.

Respondent Stuart James denied that Claimant entered any verbal stop loss order or that any agreement to sell the Claimant's position in CMC stock in the nature of a stop loss order ever existed. Stuart James alleged that Claimant never directed that The CMC stock be sold by Magnan and denied that Magnan ever guaranteed the investment or promised a huge profit on the stock. Stuart James asserted the affirmative defenses including, but not limited to, ratification, waiver, failure to mitigate damages, if any, and that the claims were barred by the statute of frauds.

Respondent Magnan did not answer the Claim.

### RELIEF REQUESTED

Claimants requested an award of \$7900.00 against both Stuart James and Magnan, plus interest, costs, and punitive damages of \$25,000.00. Stuart James requested dismissal of the claims in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the Claimant has agreed to receive a conformed copy of the Award while the originals remain on file with the NASD.

Respondent Magnan was dismissed as a party respondent in the matter because Claimant settled his claim with Magnan on or about April 18, 1991 and Claimant withdrew his claim against Magnan.

Respondent Stuart James requested that it be allowed to appear at the hearing on August 26, 1991 by telephone conference call. The panel denied the motion and the remaining parties were advised of this ruling. Stuart James failed to appear at the hearing on August 26, 1991. The panel determined to proceed in the absence of Stuart James pursuant to its authority set forth in Section 29 of the NASD Code of Arbitration Procedure. Accordingly, Stuart James will be bound by the panel's determination of all issues submitted.

Following the hearing on August 26, 1991, the panel called for post-hearing submissions on certain issues. The NASD sent an order requesting the post-hearing submissions to both Claimant and Stuart James. The parties complied with the submission request and these submissions were forwarded to the panel for consideration prior to issuance of the award in this matter.

AWARD

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

1. Stuart James is liable for and shall pay to Claimant the sum of Seven Thousand Five Hundred Five Dollars and No Cents (\$7505.00);
2. Stuart James is also liable for and shall pay to Claimant the sum of One Thousand One Hundred Twenty Dollars and No Cents (\$1120.00) as pre-judgment interest;
3. The claim for punitive damages shall be and is hereby specifically denied and dismissed; and
4. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited with the NASD by the Claimant. Stuart James is directed to directly reimburse Claimant for the \$650.00 forum fee paid to the NASD by the Claimant.

Concurring Arbitrators' Signatures

Name

Dated

Laurence S. Kahn, Esq.  
Chairman, Public Arbitrator

11-19-91

Steven F. Pflaum, Esq.  
Public Arbitrator

11-19-91

Nicholas Weir  
Industry Arbitrator

11-19-91

Date served by the NASD: 12-03-91