

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Irene W. Moore

90-03161

Name of Respondent(s)

Stuart James Company, Inc.

REPRESENTATION

Claimant Irene W. Moore appeared pro se.

Respondent The Stuart-James Company, Inc. was represented by Counsel Christa D. Taylor, Esq.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about November 6, 1990, Claimant Irene W. Moore, alleged unsuitability of investment, misrepresentation, inadequate supervision and corporate manipulation by Respondent, The Stuart-James Company, Inc. The circumstances leading the allegations enumerated above are as follows:

Claimant was solicited by phone from October 13, 1987 through June 20, 1989 by a broker of Respondent, and purchased, over this period of time, \$89,380.11 of common stock and limited partnerships. The risk factors, or net worth requirements, were never disclosed by Respondent or its broker. Claimant purchased common stock in Hitech Engineering, through Respondent. Claimant was again approached and advised to purchase additional Hitech common stock and did purchase such stock through Respondent at a time when Hitech went bankrupt.

In June of 1989, Warrentech's (another company in which Claimant owned common stock) price per share was increasing, and Claimant placed an order to sell with Respondent. The order was not initiated. In fact, Claimant made several requests of Respondent to sell the stock. Each time, Respondent failed to act on Claimant's orders.

From June of 1990, through November 2, 1990, Claimant lodged several complaints with Respondents concerning the handling of her accounts. Respondent never responded to Claimant's specific complaints.

In a Statement of Answer filed with the National Association of Securities Dealers, Inc. on or about February 27, 1991, Respondent The Stuart-James Company, Inc. denied that any actions or failure to act, by Respondent did not cause any of the losses incurred by Claimant. In addition, Respondent asserted the following affirmative defenses:

1. Claimant's claims are barred by doctrines of ratification, waiver and estoppel;
2. Claimant is barred by her own actions and inactions and lack of due diligence;
3. Claimant has failed to mitigate her damages, if any; and
4. Claimant's claims are barred by the applicable statute of limitations and the doctrine of laches.

#### RELIEF REQUESTED

Claimant Irene Moore requested that the panel award her \$212,210.64 which is treble her actual damages of \$70,736.88.

Respondent The Stuart-James Company, Inc. requested that the Claimant take nothing by her claim.

#### OTHER ISSUES

Respondent requested at the hearing that there were a number of witnesses the needed to be called by telephone to testify as to authenticity of documents presented, and as to authenticity of documents presented and as to the chain of custody. The panel considered the issue and reserved their decision on the matter until such times as such testimony was needed.

#### PROCEDURAL MATTER

On August 27, 1991 in Nashville, Tennessee during a hearing lasting a total of one session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 6, 1990 by Claimant Irene Moore and on February 26, 1991 by C. James Padgett on behalf of Respondent The Stuart-James Company, Inc.

Respondent The Stuart-James Company, Inc. did file a properly executed submission to arbitration with the NASD, and having answered the claim, appeared and testified at the hearing, is hereby bound by the determination of the arbitration panel on all issues submitted.

The parties have 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 parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent The Stuart-James Company, Inc. is hereby ordered to pay to, and is liable to, Claimant Irene W. Moore the sum of \$45,800.00 if paid within 90 days from the date of the award. If paid after 90 days, Respondent shall be liable to and is hereby ordered to pay to Claimant Irene W. Moore the sum of \$60,000.00; and

2. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$950.00 previously deposited with the NASD by the Claimant. Respondent The Stuart-James Company, Inc. is liable to Claimant and is hereby ordered to pay the above referenced cost previously paid to the NASD by the Claimant.

By the Panel

Dated: August 27, 1991

/S/ Charles Galbreath  
Presiding Chair  
Public Arbitrator

Dated: August 27, 1991

/S/ Lee Cowen  
Public Arbitrator

Dated: August 27, 1991

- /S/ Doug Phillips  
Industry Arbitrator