

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Morris J. Amitay :

Claimant :

vs. :

Gary S. Williky :
James Padgett :

Respondents :

CASE #91-00487
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 13, 1991, Claimant Morris J. Amitay, through his counsel Judith Barnett, Esq., Washington, DC, alleged that Respondent Gary S. Williky of Stuart James Co., Inc. failed to sell shares of Comverse Technology Inc. when the Claimant requested the shares be sold. The Claimant further alleged that due to the fact these shares were not sold until a month after he ordered the sale, the value of the stock decreased, causing a loss in profit. Claimant Morris J. Amitay also alleged that both Stuart James & Co. and Gary Williky acted negligently and breached their fiduciary duty.

Respondent, James Padgett, through his counsel, Donald T. Trinen, Esq., maintained that the Claimant's complaint failed to allege any wrongdoing against him and that he was named in this complaint solely because he was the President of Stuart James & Co. Respondent James Padgett further maintained that the Claimants' failure to allege any facts to support a claim against him is contrary to NASD policy requirements.

Respondent Gary S. Williky, who appeared pro se, maintained that he acted properly when handling the sale for the Claimant, Morris J. Amitay's stock. This Respondent further maintained that because the Claimants' stock was restricted, he had to remove the legend from these shares before the stock could be sold. Under these circumstances, the Respondent maintained, he had to wait for approval from the broker-dealer's legal department before he could execute a sale.

Claimant Morris J. Amitay, through his counsel, Judith Barnett, Esq. filed a Motion to Preclude Respondent Gary S. Williky's answer on the basis that Respondent Gary S. Williky had failed to comply with timeliness of filing requirements in the NASD Code of Arbitration Procedure.

Claimant Morris J. Amitay, through his counsel, Judith Barnett, Esq., also submitted a reply to Respondent James Padgett's answer, asserting that James Padgett, as President of Stuart James & Co., Inc., is liable for the alleged wrongdoing of that firm.

RELIEF REQUESTED

Claimant, Morris J. Amitay requested \$3,174.10 in actual damages.

Respondent Gary S. Williky requested that the claims of Claimant Morris J. Amitay be denied.

Respondent James Padgett requested he be dismissed from the claim of Morris J. Amitay.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 4, 1991 and not by the Respondents as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That the Respondents Gary S. Williky and James Padgett are jointly and severally liable and shall pay \$1,720.15 to Claimant Morris J. Amitay in actual damages.
2. Claimant Morris J. Amitay's motion to preclude the answer of Respondent Gary S. Williky is denied.
3. The parties shall bear their respective costs.
4. The \$125 filing fee previously deposited with

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the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Gary S. Williky and James Padgett shall pay \$125 to the Claimant as reimbursement.

AFFIRMATION

I, DAVID FREUND, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: January 21, 1992