

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
Anthony Cavalieri :
E. Wanda Cavalieri :
Claimants :
vs. :
The Stuart-James Co., Inc. :
Respondent :

CASE #91-00801
AWARD

CASE SUMMARY

Anthony and E. Wanda Cavalieri, represented by John McNeill, Boca Raton, FL, in a claim filed with the National Association of Securities Dealers, Inc. on March 13, 1991, alleged that Respondent, in spite of their knowledge of Claimant's limited means and investment sophistication, persuaded them to invest in Hitech Engineering, New York Film Works, Univation and Astrotech - all high risk securities. Claimants states that they received dunning calls that misrepresented the benefits and risks involved and breached the fiduciary duty owed.

Respondent, The Stuart-James Company, Inc. by their attorney, Christa D. Taylor, Hart & Trinan, Denver, CO, maintained that the claims are ineligible for submission to arbitration under Section 15 of the NASD Code of Arbitration Procedure. Respondent states that Claimant's monthly statements do not show a purchase of Hitech Engineering at all and that the New York Film Works stock was purchased elsewhere and deposited in their new account at Stuart-James.

They continue that New York Film Works was sold on July 31, 1986 for Seven Hundred Forty-Two Dollars and Fifty Cents (\$742.50), that the Univation stock was delivered to Claimants on August 18, 1986 and that Astrotech International Corporation was delivered to Claimants on January 19, 1987. Respondent affirms that the Cavalieris' would have received stockholder communications from all issuers and that this case is a classic example of investors who purchase securities and then try to pass their loss on to someone else.

Respondent, The Stuart-James Company, Inc., amended its answer to state that recently discovered account records show that

Claimants purchased Hitech Engineering and New York Film Works stock through Stuart-James. They continue that Claimants sold the New York Film Works but have speculated and retained the Hitech Engineering stock.

REPORT OF ARBITRATOR

1. As to Respondent's Motion to Dismiss Claimant's Statement of Claim based on various statute of limitations, the arbitrator finds that the claims as to the purchase of shares in HiTech Engineering (October 25, 1984) and New York Film Works (November 21, 1984) are time-barred pursuant to Section 15 of the NASD Code of Arbitration Procedure and are hereby dismissed with prejudice. That section limits submissions of claims which have occurred within six years of filing of the claim; beyond that time, the NASD lacks jurisdiction to consider them.

2. As to the purchases of shares of Univation (July 31, 1986) and Astrotech (December 17, 1986), the Arbitrator finds that the Florida two-year statute of limitations period is in effect pursuant to Florida Statute Sec. 95.11(4)(e). That provision states that claims must be brought within two years but not more than five years from the date such violation occurred with the exercise of due diligence. However, the Complaint and Answer as amended are unclear as to when Claimants discovered or should have discovered the alleged violations and therefore, arbitrator is not in a position to dismiss Claimant's claim as to the aforementioned stocks based on the Statute of Limitations.

3. In this regard, the balance of the Statement of Claim does not allege sufficient facts to state a claim upon which relief can be granted as to the purchases of Univation and Astrotech.

RELIEF REQUESTED

Claimants request damages of Seven Thousand Four Hundred Twenty-Two Dollars and Fifty Cents (\$7,422.50).

Respondent requests dismissal of the claim.

AWARD

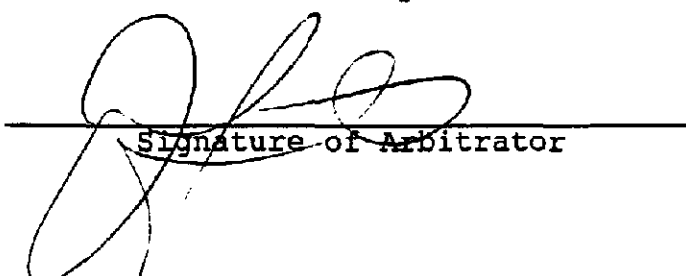
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph L. Bernstein, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 26, 1991 and by the Respondent on April 24, 1991;

And, that 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 Claim of Anthony and E. Wanda Cavalieri be, and hereby is, dismissed in its entirety.
2. The One Hundred Fifty Dollars (\$150) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, JOSEPH L. BERNSTEIN, ESQ., 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

DATED: 10/8/91