

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Robert Huizenga

91-03637

Name of Respondents

Steven Braker  
R.J. Steichen & Company  
Hayne, Miller & Swearingen Inc.

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REPRESENTATION

For Claimant: Pro se.

For Respondent Steven Braker: Pro se. For Respondent R. J. Steichen & Company: John R. Dorgan, Esq. of Frommelt & Eide, Ltd., Minneapolis, Minnesota. For Respondent Hayne, Miller & Swearingen, Inc.: Frank A. Taylor, Esq. of Popham Haik Schmebrich & Kaufman, Ltd., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: November 19, 1991.

Claimant's Submission Agreement signed on: October 28, 1991.

Statement of Answer filed by Respondent Steven Braker on: February 10, 1992. Statement of Answer filed by Respondent R. J. Steichen & Company on: January 27, 1992. Statement of Answer filed by Respondent Hayne, Miller & Swearingen, Inc. on: March 11, 1992.

Claimant Steven Braker's Submission Agreement signed on: February 10, 1992. Respondent R. J. Steichen & Company's Submission Agreement signed on: January 24, 1992. Respondent Hayne, Miller, & Swearingen, Inc.'s Submission Agreement signed on: March 6, 1992.

HEARING INFORMATION

Hearing Date/Sessions: July 9, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Robert Huizenga ("Huizenga") alleged that while Respondent Steven Braker ("Braker") was broker for Respondent Hayne, Miller & Swearingen, Inc. ("Hayne"), Braker bought stocks in First Delta and Arex of Minnesota without express or implied authorization from Huizenga. Huizenga further alleged that he pursued Braker even after he had moved to Respondent R. J. Steichen & Company ("Steichen").

Respondent Braker denied the allegations set forth in the Statement of Claim. Braker alleged that Huizenga ordered, purchased, and paid for the shares of First Delta and for the shares of Arex of Minnesota.

Respondent R. J. Steichen & Company generally denied the allegations set forth in the Statement of Claim. Steichen alleged that Huizenga opened a trade account with Steichen after Braker terminated his employment with Hayne, but there was no trading activity in Huizenga's account at Steichen. Steichen alleged that the said trades occurred before Huizenga's account was transferred to Steichen.

Respondent Hayne, Miller & Swearingen, Inc. denied that Huizenga suffered any damages. Hayne alleged that all trading activity was proper, authorized, and that Huizenga either made the trades himself or acquiesced in the trades.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$28,560.00 for the First Delta stock and \$30,251.00 for the Arex of Minnesota stock, plus interest at 8% which the monies would have grown to \$35,977.37 and \$38,102.50 respectively, for a total of \$74,079.87.

Respondent Braker requested that he be found not liable and that the claim is not right and is without merit. Respondent Steichen requested that the Statement of Claim be dismissed in its entirety, and in the alternative, if any damages are awarded, that Braker and/or Hayne be responsible, and not Steichen.

Respondent Hayne requested that the Statement of Claim be dismissed, with prejudice, because it is not timely, and that Huizenga pay Hayne's costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Counsel for Respondent R.J. Steichen asserted a Motion to Dismiss the Statement of Claim. The panel decided to take the motion under advisement. Respondent R.J. Steichen re-asserted the motion at the close of Claimant's

case. The panel granted the Motion to Dismiss Respondent R. J. Steichen.

Counsel for Hayne Miller & Swearingen, Inc. Motioned To Dismiss the claim based on the Statute of Limitations. The panel denied the motion.

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 Statement of Claim is denied;
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

FORUM FEES

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

2 sessions X \$500.00 = \$1,000.00 minus hearing deposit of \$500.00 = net \$500.00 due.

Forum fees Assessed Against Respondent Hayne, Miller & Swearingen, Inc. in the amount of \$500.00. Respondent Hayne, Miller & Swearingen, Inc. shall also reimburse to the Claimant the sum of \$650.00 which was the amount previously deposited with the NASD for the filing fee and hearing session deposit.

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

By The Arbitration Panel:

Dated: \_\_\_\_\_

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Douglas D. McFarland, Esq., Chairperson  
Public Arbitrator

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James H. Colburn  
Public Arbitrator

  
\_\_\_\_\_  
James Kaiser  
Industry Arbitrator

  
\_\_\_\_\_  
July 29 1992

Date Award Served By The NASD: \_\_\_\_\_

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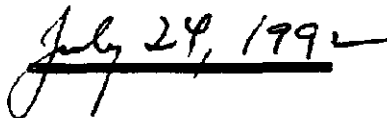
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By The Arbitration Panel:

  
Douglas D. McFarland, Esq., Chairperson  
Public Arbitrator

Dated:

  
July 24, 1991

\_\_\_\_\_  
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Public Arbitrator

\_\_\_\_\_  
James Kaiser  
Industry Arbitrator

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Public Arbitrator

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Date Award Served By The NASD: \_\_\_\_\_