

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

Raymond and Dorothy Rimkus

No. 93-00607

Name of Respondents

D.H. Blair & Company
Steve Markowitz
Al Wardi
Joseph Sorbara

REPRESENTATION OF PARTIES

For Claimants: James J. Moylan, Esq. of James J. Moylan & Associates, LTD., Chicago, Illinois, and J. Michael Fitzsimmons, Esq. of Fitzsimmons, Roberts and Paine, Oak Brook, Illinois.

For Respondent D. H. Blair & Co.: Justin Y. K. Chu, Esq., of Pollack & Kaminsky, New York, New York.

For Respondents Steve Markowitz, Al Wardi, and Joseph Sorbara: Lina Laboratore, Esq., of Bachner, Tally, Polevoy & Misher, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: February 16, 1993.

Claimants' Submission Agreement signed: March 6, 1993.

Statement of Answer filed by Respondent D. H. Blair & Co. on or about: May 6, 1993.

Respondent D. H. Blair & Co.'s Submission Agreement signed on: April 28, 1993.

Joint Statement of Answer filed by Respondents Steve Markowitz, Al Wardi, and Joseph Sorbara on or about: May 10, 1993.

Respondent Steve Markowitz's Submission Agreement signed on: May 6, 1993.

Respondent Albert G. Wardi's Submission Agreement signed on: May

6, 1993.

Respondent Joseph Sorbara's Submission Agreement signed on: May 6, 1993.

HEARING INFORMATION

Hearing date: October 12, 1993. Three (3) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Raymond and Dorothy Rimkus ("Claimants") alleged: Breach of contract; violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; unsuitable recommendations; misrepresentations and omissions; violations of the Sections 11 and 12 of the Securities Act of 1933; breach of fiduciary duty; respondeat superior liability; liability arising under Section 20 of the Securities Exchange Act of 1934; and Violation of Illinois Securities Laws by Respondents D. H. Blair & Co, Inc. ("DHB"), Steve Markowitz ("Markowitz"), Al Wardi ("Wardi"), and Joseph Sorbara ("Sorbara"). The allegations arose out of transactions in the following securities: Pure Tech International, Inc. common stock and warrants; Legend Company Chicago, Inc.; News Communications, Inc. common stock and warrants; and Triple Threat Enterprises, Inc. common stock and warrants.

DHB denied each and every material allegation in the Statement of Claim. In addition, DHB asserted that Claimants' claims are barred: By the applicable statute of limitation; because Claimants' ratified the transactions; because Claimants failed to mitigate their damages, if any; and because Claimants' Statement of Claim failed to state a claim upon which relief can be granted.

Respondents Markowitz, Wardi, and Sorbara (hereinafter collectively referred to as "Respondents"), unless specifically admitted in their joint Answer, denied each and every allegation in the Statement of Claim. In addition, Respondents asserted the following defenses:

1. The Statement of Claim fails to state a cause of action upon which relief may be granted as against the individual Respondents.
2. Claimants waived their purported claims and are estopped from asserting them as against the individual Respondents.

3. Claimants ratified any alleged acts claimed to have been committed by the individual Respondents.
4. Claimants failed to mitigate their damages.
5. At all times, the individual Respondents conducted themselves in a business-like and professional manner, did not breach any fiduciary duties and acted in good faith.
6. Claimants' claims are barred by the applicable Statute of Limitations.
7. Claimants' laches in asserting their claims precludes recovery.
8. The law is clear that sales hyperbole does not rise to the level of a 10(b) violation.
9. If Claimants suffered damages as alleged in the Statement of Claim, any and all such damages were solely and proximately caused by the independent, supervening, and intervening acts of Claimants who did not justifiably rely upon the individual Respondents and over whom the individual Respondents had no control.

RELIEF REQUESTED

In Counts I through VII, Claimants requested an award in their favor, and against DHB and the individual Respondents, jointly and severally, in the aggregate amount of their losses of at least \$55,964.04, plus interest, the costs of this action, and for such other relief as the arbitrators deemed appropriate.

In Count VIII, Claimants requested an award in their favor, and against DHB in the aggregate amount of their losses of at least \$55,964.04, plus interest, the costs of this action, and for such other relief as the arbitrators deemed appropriate.

For Count IX, Claimants requested an award in their favor, and against DHB and the individual Respondents, jointly and severally, in the aggregate amount of their losses of at least \$55,964.04, plus interest, the costs of this action, their reasonable attorneys' fees, and for such other relief as the arbitrators deemed appropriate.

Respondent DHB requested: (i) The dismissal of the Statement of

Claim; (ii) an award to DHB for the costs and disbursements in defending this claim; and (iii) an award to DHB of such other and further relief, including attorneys' fees, as the arbitrators deemed just and proper.

Respondents requested: (i) A determination denying Claimants' claims for relief against them; and (ii) awarding them costs and disbursements, including reasonable attorneys' fees, incurred by the individual Respondents as a result of this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

On May 6, 1993, the individual Respondents requested that the hearing in this matter be held in New York, New York. On May 10, 1993, DHB made a similar request based upon a customer pre-dispute arbitration agreement contained in the Claimants' customer agreement. On May 17, 1993, the Director of Arbitration denied DHB's and the individual Respondents' requests to conduct the hearings in this matter in New York, New York.

On May 24, 1993, DHB raised the same request, and requested reconsideration of the Director's prior determination. Claimants response was received on June 10, 1993, and the matter was submitted to the undersigned arbitrators. The panel denied the request.

The parties have agreed that the Award in this matter may be executed by 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(s) remain on file with the NASD.

AWARD

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

1. Claimants, Raymond and Dorothy Rinkus' claims made against Respondents D.H. Blair & Co., Inc., Steve Markowitz, Al Wardi, and Joseph Sorbara are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall pay its own costs and expenses

associated with this arbitration, including attorneys' fees, except as set forth below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

3 hearing sessions x \$500.00 = \$1,500.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimants.

Additional forum fees in the amount of \$1,000.00 are assessed against the Claimants.

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

CONCURRING ARBITRATORS

Dated:

Name:

November 8, 1993

/s/William J. Nissen
William J. Nissen
Presiding Chair
Public Arbitrator

November 9, 1993

/s/Gerald E. Pelzer
Gerald E. Pelzer
Industry Arbitrator

November 10, 1993

/s/John B. Borsch
John B. Borsch
Public Arbitrator

Date of Service by the NASD: 11-15-93