

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

**In the Matter of the Arbitration Between**

**Name of Claimant**

Richard J. Pantel

93-02284

**Name of Respondents**

Reich & Co., Inc.  
David H. Engel

---

**REPRESENTATION**

For Claimant Richard J. Pantel ("Pantel") appeared Mary Ann Stokes, Esq. of the law firm of Cohn Lifland Pearlman Herrmann & Knopf, Saddle Brook, NJ.

For Respondent Reich & Co., Inc. ("Reich & Co") appeared Charles Padgett, Esq. of Fahnestock & Company's in-house counsel, New York City, NY.

For Respondent David H. Engel ("Engel") appeared Robert M. Sweeney of Gibraltar Securities Co., Florham Park, NJ.

**CASE INFORMATION**

The Statement of Claim was filed on June 2, 1993 and claimant Pantel's submission agreement was executed on May 27, 1993.

The Statement of Answer of Respondent Reich & Co., Inc. was filed on August 24, 1994.

The Statement of Answer of Respondent David H. Engel was filed on August 24, 1993 and Respondent Engel's submission agreement was executed on September 24, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference:	January 14, 1994	-	One Session/ 3 Arbs.
	April 6, 1994	-	One Session/ 1 Arb.

Hearing Date/Sessions: July 28, 1994 - Two Sessions

The hearing was held at the National Association of Securities Dealers, Inc.'s offices located in New York City, NY.

### **CASE SUMMARY**

Claimant alleged that in September 1992, Claimant opened a discretionary account at Vantage Securities, Inc., which became known as Reich & Co., Inc.; that Claimant's investment representative was Respondent Engel from the inception of the account at Vantage until Engel left the employ of Reich & Co., Inc. in or about April of 1993; and that upon opening the account, Claimant told Engel that his investment goal was capital growth.

Further, Claimant alleged that he advised Respondent Engel that frequent trades were acceptable to him but that he wished to place a standing 10% stop loss order on all purchases made but that Respondent Engel informed Claimant that a standing stop loss order was not possible and that in substitute of the stop loss order, Engel would call Claimant on a daily basis with all relevant price information to insure that losses would be limited to 10% of the purchase price.

It was also alleged by Claimant that from September 1992 through early December 1992, Engel and Pantel spoke on a daily basis and all trades made during that time period were authorized either before or after execution; that from early December 1992 through mid-December 1992, Respondent Engel suddenly failed to call Claimant; and that despite having discretionary authority to execute trades and despite his knowledge that Claimant wanted all losses stopped at 10% of the purchase price, Respondent Engel failed to sell Claimant's holding of 400 shares of IBM until December 16, 1992, the loss exceeding 10% of the purchase price. Claimant further alleged that from mid-December 1992 through mid-January 1993, Respondent Engel resumed calling Claimant on a daily basis; that thereafter, communication again broke down; and that as a result of Respondent Engel's failure to communicate with Claimant, Respondent Engel is liable to Claimant in the amount of his losses.

In addition, Claimant alleged that Respondent Reich & Co., Inc. is responsible for the negligence of its employee both under the theory of respondeat superior and under the theory of failure to supervise.

Respondent Engel denied all allegations of wrongdoing stated in the statement of claim. Respondent Engel maintained that Claimant was a sophisticated investor who understood the equity markets and desired to have his account managed in an aggressive manner; that Claimant's personal interest was in the technology and computer sectors of the equity market; and that although this sector of the market was at times volatile, Claimant understood the risks of this market.

Further, Respondent Engel denied that Claimant's account was a discretionary account, as such accounts were forbidden by Engel's employer; denied that there was any interruption in the communication between the parties; and denied that he failed to return Claimant's phone calls. Respondent Engel also maintained that there was no agreement between the parties as to a standing 10% stop loss order on every transaction entered into Claimant's account.

As and for a cross-claim, Respondent Engel requested indemnification from Reich & Co., Inc. for any award assessed against him.

Respondent Reich & Co., Inc. denied all allegations of wrongdoing asserted against it in the statement of claim. Respondent Reich maintained that the Claimant failed to allege any allegation upon which Reich may be liable; that the damages claimed to have been sustained by Claimant, if any, were caused solely or contributed to by the negligence and wrong doing of Claimant; and that Claimant continued to engage in trades with Respondent Reich through Respondent Engel, even after Claimant lost more than 10% of his IBM investment and other subsequent investments.

As and for its cross-claim, Reich requested that in the event Reich is found responsible for any of the damages suffered by Claimant, such damages have been caused solely by the actions of Reich's co-respondent, David Engel, and as such Reich requests judgment against Engel in such amount as Reich shall be found to have been responsible to the Claimant.

#### **RELIEF REQUESTED**

Claimant, Richard J. Pantel, requested an award against Respondents, Reich & Co., Inc. and David H. Engel as follows:

- a. Compensatory damages.
- b. Costs of Arbitration.
- c. Reasonable attorney's fees.

Respondent Engel requested that all claims asserted against him be dismissed. Respondent Engel also requested reimbursement from Reich & Co., Inc. of all expenses incurred in connection with his defense in this matter as well indemnification of any potential award that is assessed against him.

Respondent Reich & Co., Inc. requested an award dismissing the claimant's statement of claim together with reimbursement of costs, disbursements and reasonable attorneys' fees, and such other relief as may be just, proper and equitable under the circumstances. Respondent Reich also requested judgment against Respondent Engel in such amount as Reich shall be found to have been responsible to the Claimant plus attorneys' fees and costs of this arbitration.

### **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.

The parties advised the arbitrators at the hearing that Claimant was withdrawing his claims against Respondent Reich & Co., Inc., with prejudice, and wished to proceed against Respondent Engel as the sole remaining respondent.

### **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. All claims against Respondent Engel be and hereby are denied.
2. Each party shall bear their respective costs, including attorneys' fees.
3. Respondent Engel's cross-claim against Respondent Reich & Co., Inc. be and hereby is denied.
4. Respondent Reich & Co., Inc.'s cross-claim against Respondent Engel be and hereby is denied.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 claim filing fee and the \$500.00 cross-claim filing fee and, in addition, the following Forum Fees are assessed:

1 prehearing session (full panel) x \$400.00 = \$400.00  
1 prehearing session (one arb.) x \$300.00 = \$300.00  
2 sessions X \$400 = \$800.00 minus hearing session deposit of 400 = net \$400 due.

**TOTAL OUTSTANDING FORUM FEES:           \$1,100.00**

**Forum fees Assessed Against:**

1. Claimant Pantel be and hereby is liable and shall pay to the NASD the sum of \$600.00 minus \$400.00 previously deposited with the

NASD for a total outstanding balance of \$200.00.

2. Reich & Co., Inc. be and hereby is liable and shall pay to the NASD the sum of \$900.00 minus \$350.00 previously deposited with the NASD for a total outstanding balance of \$550.00.

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

Concurring Arbitrators' Signatures

Name

Stanley M. Ulanoff  
Stanley M. Ulanoff  
Chairperson - Public Arbitrator

Martin Finkelhor, Esq.  
Public Arbitrator

Gertrude K. Schwartz  
Industry Arbitrator

STATE OF

COUNTY OF

On this 22 day of August, 1994, before me personally appeared Stanley M. Ulanoff known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deedra G. Levine  
Notary Public  
DEEDRA G. LEVINE  
Notary Public, Macomb County, Michigan  
My Commission Expires June 14, 1997

Date of Decision: September 19, 1994

NASD for a total outstanding balance of \$200.00.

2. Reich & Co., Inc. be and hereby is liable and shall pay to the NASD the sum of \$900.00 minus \$350.00 previously deposited with the NASD for a total outstanding balance of \$550.00.

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

Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_  
Stanley M. Ulanoff  
Chairperson - Public Arbitrator

\_\_\_\_\_  
Martin Finkelhor, Esq.  
Public Arbitrator

\_\_\_\_\_  
Gertrude K. Schwartz  
Industry Arbitrator

STATE OF

COUNTY OF

On this 22 day of August, 1994, before me personally appeared Martin Finkelhor known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

Executed on: \_\_\_\_\_  
Date of Decision: September 7, 1994  
Date of Decision: September 19, 1994

NASD for a total outstanding balance of \$200.00.

2. Reich & Co., Inc. be and hereby is liable and shall pay to the NASD the sum of \$900.00 minus \$350.00 previously deposited with the NASD for a total outstanding balance of \$550.00.

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

Concurring Arbitrators' Signatures  
Name

Stanley M. Ulanoff  
Chairperson - Public Arbitrator

Martin Finkelhor, Esq.  
Public Arbitrator

Gertrude K. Schwartz  
Gertrude K. Schwartz  
Industry Arbitrator

STATE OF NEW YORK  
COUNTY OF KINGS

On this 15 day of SEPT., 1994, before me personally appeared GERTRUDE K. SCHWARTZ known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Richard Traub

REBEKAH H. TRAUBEN  
Notary Public, State of New York  
No. 348372320  
Qualified in Kings County  
Commission Expires March 31, 1995  
DEC 31, 1994

Date of Decision: September 19, 1994

NASD for a total outstanding balance of \$200.00.


2. Reich & Co., Inc. be and hereby is liable and shall pay to the NASD the sum of \$900.00 minus \$350.00 previously deposited with the NASD for a total outstanding balance of \$550.00.

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

Concurring Arbitrators' Signatures  
Name

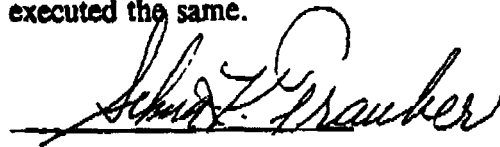
\_\_\_\_\_  
Stanley M. Ulanoff  
Chairperson - Public Arbitrator

\_\_\_\_\_  
Martin Finkelhor, Esq.  
Public Arbitrator

  
Gertrude K. Schwartz  
Industry Arbitrator

STATE OF NEW YORK  
COUNTY OF KINGS

On this 15 day of SEPT., 1994, before me personally appeared GERTRUDE K. SCHWARTZ known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



SELMA K. TRAUBEN  
Notary Public, State of New York  
No. 269372220  
Qualified in Kings County  
Commission Expires March 30, 1995  
DEC. 31, 1994

Date of Decision: September 19, 1994