

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Walter Sundel

vs.

Case #  
93-05279

Name of Respondents

Stuart Coleman & Co., Inc.  
Stuart Voisin

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**REPRESENTATION**

For Claimant, Walter Sundel ("Claimant"), Jerome Olitt, Esq., from Arbitration and Mediation Specialists, Inc., located in Stamford, Connecticut.

For Respondents, Stuart Coleman & Co., Inc. ("Stuart Coleman") and Stuart Voisin ("Voisin") (collectively "Respondents"), Victor T. Sicuranza, Esq., in-house counsel for Stuart Coleman, located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on December 15, 1993.

Claimant's Submission Agreement was signed on December 15, 1993.

Joint Statement of Answer of Respondents was filed on March 9, 1994.

Respondent Stuart Coleman's Submission Agreement was signed on March 11, 1994.

Respondent Voisin's Submission Agreement was signed on March 11, 1994.

**HEARING INFORMATION**

Hearing Dates/Sessions:     November 14, 1994 - 2 sessions  
   November 15, 1994 - 2 sessions

Hearing Location: NASD offices located in New York, New York.

### **CASE SUMMARY**

Claimant has commenced this arbitration for damages based upon the following theories: breach of oral agreement; misrepresentation and deceit; conversion; breach of implied covenant of good faith and fair dealing; and, willful and intentional interference of contract. Claimant alleges that as part of employment agreement, he was made a member of the Respondent firm's Syndicate Department. Claimant also alleges that under the firm's policy he was entitled to receive a percentage of the aggregate shares of all new issues underwritten by Stuart Coleman due to Claimant's solicitation efforts as well as a percentage of any monies or shares which Stuart Coleman would receive from other investment banking activities.

Claimant further alleges that during May 1991, he introduced ARM Financial Corporation ("ARM") to the firm as an investment banking transaction. Claimant states that the deal was consummated and the firm received an aggregate of 37,353 ARM restricted common shares. Claimant alleges that he is entitled to 3,735 of those shares. Claimant also alleges that he continued his efforts and was actively engaged in obtaining two new issues--MRV Communications, Inc. and Shuffle Master, Inc. and that Respondents informed him that he was no longer permitted to engage directly in such efforts. Claimant further alleges that Respondents further restricted his ability to function on the firm's syndicate operations. Claimant states that Voisin assured him that he would still receive his 3,735 shares of ARM but later reneged on this agreement.

Claimant also asserts that although his Form U-5 reflects a voluntary termination, he was involuntarily forced and/or compelled to terminate his employment with Stuart Coleman.

Respondents deny the allegations of wrongdoing and deny liability. Respondents maintain that the written agreement concerning ARM was not orally amended by Voisin and that the dispute that led to Claimant's resignation was his inability and/or refusal to obey director orders from the Syndicate Department manager. Respondents also maintain that Claimant was instructed not engage in any way and that he disobeyed this instructions. Respondents further maintain that Claimant was not entitled to the \$500.00 commission on Shuffle Master because he was denied participation in that offering and was under suspension due to insubordination. Respondent further alleges that there was no loss of \$500 commission by the Claimant on shuffle matter because no orders were received.

### **RELIEF REQUESTED**

Claimant initially requested monetary damages of \$9,837.00 and then reduced this amount to \$4,400.00 or in the alternative delivery of 3,735 shares of ARM and \$500 for lost commissions together with interest, costs, fees and expenses incurred due to these proceedings.

Respondents request dismissal of the claim along with the costs of this proceeding.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Stuart Coleman, shall pay to Claimant the sum of \$500.00, inclusive of interest, as compensation for Shuffle Master.
2. All other claims for relief against Respondent, Stuart Coleman, are denied.
2. All claims for relief against Stuart Voisin are denied.
3. The forum fees, including all fees assessed by the NASD for pre-hearing conferences, filing fees and hearing sessions shall be allocated equally among Claimant and Respondents, so that, each party is assessed one-third of the costs.
4. Each party shall bear their own costs.

### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee: \$500.00

Hearing Session Deposit: \$2,400.00 (4 sessions x 600.00 per hearing session)

Total Fees: \$2,900.00

1. Claimant is assessed a non-refundable filing fee of \$966.66. Claimant previously paid \$800.00 and owes a balance of \$166.66.

2. Respondent, Stuart Coleman, is assessed \$966.66.

3. Respondent, Stuart Voisin, is assessed \$966.66.

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

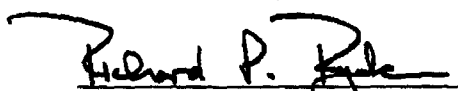
**ARBITRATION PANEL**

Richard P. Ryder, Esq. - Industry Chairperson

James R. Madan - Industry Panelist

Herbert Z. Geiger, Esq. - Industry Panelist

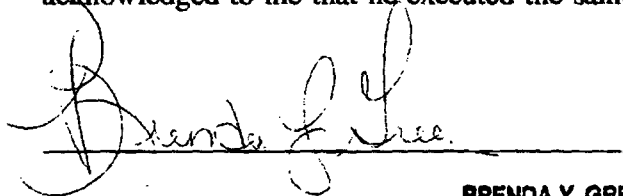
Concurring Arbitrator's Signature

  
Richard P. Ryder, Esq.

Date of Decision: December 21, 1994

STATE OF NEW JERSEY s.s.:  
COUNTY OF ESSEX

On this 15<sup>th</sup> day of December, 1994, before me personally appeared Richard P. Ryder known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



BRENDA Y. GREEN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Mar. 30, 1997

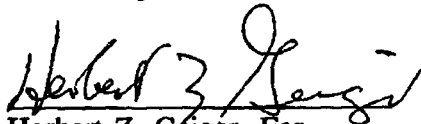
2. Respondent, Stuart Coleman, is assessed \$966.66.
3. Respondent, Stuart Voisin, is assessed \$966.66.

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

ARBITRATION PANEL

Richard P. Ryder, Esq.	-	Industry Chairperson
James R. Madan	-	Industry Panelist
Herbert Z. Geiger, Esq.	-	Industry Panelist

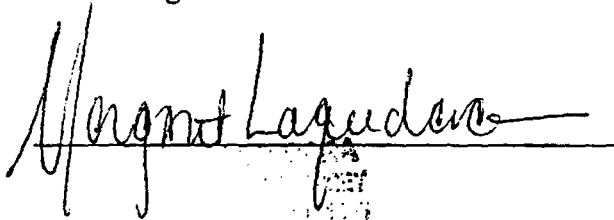
Concurring Arbitrator's Signature

  
Herbert Z. Geiger, Esq.

Date of Decision: December 21, 1994

STATE OF <sup>NJ</sup>  
COUNTY OF <sup>Bergen</sup> s.s.:

On this 17 day of December, 1994, before me personally appeared Herbert Z. Geiger known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



2. Respondent, Stuart Coleman, is assessed \$966.66.

3. Respondent, Stuart Voisin, is assessed \$966.66.

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

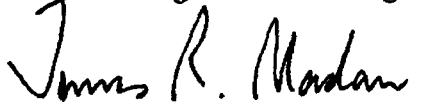
ARBITRATION PANEL

Richard P. Ryder, Esq. - Industry Chairperson

James R. Madan - Industry Panelist

Herbert Z. Geiger, Esq. - Industry Panelist

Concurring Arbitrator's Signature



James R. Madan

Date of Decision: December 21, 1994

STATE OF  
COUNTY OF

s.s.:

On this 13 day of December, 1994, before me personally appeared James R. Madan known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



BARBARA L. DERASMO  
Notary Public, State of New York  
No. 4963110  
Qualified in Westchester County  
Commission Expires March 5, 1996