

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Estate of Terry M. Heller,  
Judith Heller, Executrix, (#94-00512)  
C. Paul Morrow, (#94-00513)  
Conley Lacey, (#94-00516)  
Jon Cantalini, (#94-00517)

v.

**CONSOLIDATED  
CASES**

**Name of Respondent(s)**

Reich & Co., Inc.  
Gerard Mangiardi

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**REPRESENTATION**

For Claimants: Jonathan T. Zackey, Esq., Bellevue, Washington

For Respondent Reich & Co., Inc.: Eric Shames, Esq., Fahnestock & Co., New York, New York

Respondent Gerard Mangiardi represented himself.

**CASE INFORMATION**

All Statements of Claim filed on February 11, 1994.

Claimants' Submission Agreements signed as follows:

|                           |                  |
|---------------------------|------------------|
| Judith Heller, Executrix: | January 13, 1994 |
| C. Paul Morrow:           | January 7, 1994  |
| Conley Lacey:             | January 10, 1994 |
| Jon Cantalini:            | January 20, 1994 |

Statement of Answer filed By Respondents:

Reich & Co., Inc.:  
Gerard Mangiardi:

None submitted  
August 25, 1994

Respondents' Submission Agreements signed: None submitted.

### **HEARING INFORMATION**

Pre-hearing telephone conferences were held as follows:

|                |   |           |
|----------------|---|-----------|
| April 10, 1997 | - | 1 session |
| April 17, 1997 | - | 1 session |

The evidentiary hearing was held in Seattle, Washington, on January 27, 1998, and lasted 2 sessions.

### **CASE SUMMARY**

All Claimants alleged that Respondents failed to exercise due diligence and requisite care in the offering and sale of units (including promissory notes and warrants to purchase common stock) in Plural Technologies, Inc. (now bankrupt) by private placement memorandum on the eve of the company's failure. Claimants further alleged misrepresentations and omission of material facts were made by Respondents in order to induce Claimants to purchase the securities at issue.

Respondent Reich & Co. did not file responsive pleadings.

Respondent Mangiardi denied all allegations of wrongdoing, and stated that he was not the appropriate party to this action.

### **RELIEF REQUESTED**

Claimants requested damages as follows:

Heller - \$100,000.00 in compensatory damages plus interest, attorney's fees and costs.

Morrow - \$ 12,500.00 in compensatory damages plus interest, attorney's fees and costs.

Lacey - \$25,000.00 in compensatory damages plus interest, attorney's fees and costs.

Cantalini - \$25,000.00 in compensatory damages plus interest, attorney's fees and costs.

Respondent Mangiardi requested dismissal of the claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The arbitration panel convened a telephone hearing on April 17, 1997, to hear arguments concerning jurisdictional issues raised by Reich & Co., which asserted that the company identified in this case was incorporated in New York ("old Reich & Co."), and that the entity represented by Mr. Shames was incorporated in Alabama ("new Reich & Co."), and further that the liabilities of the "old" company do not flow to the "new" company. By Order dated May 8, 1997, the panel determined that sufficient connections existed between the company identified as "old Reich & Co." to bind "new Reich & Co." as a party in this arbitration case.

Counsel for "new Reich & Co." maintained that this entity was not subject to NASD jurisdiction in this case and declined to file a Statement of Answer or a Submission Agreement, and did not appear at the evidentiary hearing.

Respondent Gerard Mangiardi did not appear at the evidentiary hearing.

All claims were filed originally in the United States District Court for the Western District of Washington at Seattle, Case no. C92-1283, filed October 2, 1992. The matter was ordered to arbitration by order of the Court, Chief Judge Barbara J. Rothstein, issued October 19, 1993.

Prior to the conclusion of the evidentiary hearing, Claimants dismissed all claims against Gerard Mangiardi.

The parties present at the hearing agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

### **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. With respect to the claims asserted by the Estate of Terry M. Heller, Respondent Reich & Co. is liable for and shall pay to Claimant the sum of \$221,068.14 in satisfaction of all claims.
2. With respect to the claims asserted by C. Paul Morrow, Respondent Reich & Co. is liable for and shall pay to Claimant the sum of \$27,633.52 in satisfaction of all claims.
3. With respect to the claims of Conley Lacey, Respondent Reich & Co. is liable for and shall pay to Claimant the sum of \$55,267.04 in satisfaction of all claims.
4. With respect to the claims of Jon Cantalini, Respondent Reich & Co. is liable for and shall

pay to Claimant the sum of \$55,267.04 in satisfaction of all claims.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimants' non-refundable filing fees but shall refund their hearing session deposits as follows:

|                  | <u>Retain</u> | <u>Refund</u> |
|------------------|---------------|---------------|
| Estate of Heller | \$ 150.00     | \$ 500.00     |
| C. Paul Morrow   | \$ 100.00     | \$ 400.00     |
| Conley Lacey     | \$ 100.00     | \$ 400.00     |
| Jon Cantalini    | \$ 100.00     | \$ 400.00     |

Respondent Reich & Co. is assessed all forum fees, payable to NASDR, Inc.

|   |                    |
|---|--------------------|
| 2 pre-hearing telephone conferences @ \$300/session | \$ 600.00          |
| 2 hearing sessions @ \$500/session                  | <u>\$ 1,000.00</u> |
| Total:  | <u>\$ 1,600.00</u> |

Concurring Arbitrators Signatures:

Date signed:



Robert M. Stein  
Presiding Chairperson  
Public Arbitrator

2-23-98

\_\_\_\_\_  
Prudence W. Baldwin  
Public Arbitrator

\_\_\_\_\_  
Peter G. Walker  
Securities Industry Arbitrator

Date served: 3/5/1998

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Securities Industry Arbitrator

\_\_\_\_\_  
26 February 1998

Date served: 3/5/1998

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Public Arbitrator

  
\_\_\_\_\_  
Peter G. Walker  
Securities Industry Arbitrator

\_\_\_\_\_  
2/24/98

Date served: 3/5/1998