

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Isadore Fendelman, and
Bernice Fendelman,
Claimants

and

94-02201

Jerome Stanford Stein,
Respondent

REPRESENTATION OF PARTIES

Isadore Fendelman, and Bernice Fendelman ("Claimants") were represented by Howard S. Smotkin, Esq., of McBrearty & Smotkin, and Matthew D. O'Leary, Esq., of Riezman & Blitz, P.C., St. Louis, Missouri.

Jerome Stanford Stein ("Respondent") was represented by Irl B. Baris, Esq., St. Louis, Missouri.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about June 7, 1994. Claimants' Submission Agreement was signed on June 2, 1994.

Respondent's Statement of Answer was filed on or about September 14, 1994. Respondent's Submission Agreement was signed on September 14, 1994.

HEARING INFORMATION

A Pre-hearing conference was held on June 6, 1995, for a total of one (1) session.

The hearing was held on June 7, 1995, for two (2) sessions, June 8, 1995, for two (2) sessions, and on June 19, 1995, for two (2) sessions in St. Louis, Missouri, for a total of six (6) sessions.

CASE SUMMARY

Claimants stated that on January 25, 1990, they instituted a lawsuit against Respondent and others in the United States District Court for the Eastern District of Missouri styled Isadore Fendelman and Bernice Fendelman v. Jerry Stein, et al., Cause No. 90-0173-C-2. That action asserted claims under §10(b) of the Securities Exchange Act (the "Exchange Act") [15 U.S.C. §78(j)(b)] and Rule 10b-5 [17C.F.R. 240.10b-5] promulgated thereunder, and §20(a) of the Exchange Act [15 U.S.C. §78(t)], §§1962(a) and (c) of the Racketeer Influenced and Corrupt Organizations Act [Title IX of the Organized Crime Control Act of 1970, 18 U.S.C. §§1962(a), (c)] ("RICO"), and claims for breach

of fiduciary duty, fraud, negligent misrepresentation, negligence, conversion, and breach of contract arising under the laws of the State of Missouri. Claimant further stated that on April 12, 1994, the United States District Court for the Eastern District of Missouri ordered that the Claimants' claims against Respondent be stayed pending arbitration.

In their arbitration Statement of Claim, Claimants alleged that Respondent: Violated §§10(b), and Rule 10b-5 promulgated thereunder, and 20(a) of the Exchange Act; violation of 18 U.S.C. §1961, 15 U.S.C. §78(j), and 18 U.S.C. §§1341 and 1343; breached his fiduciary duty to the Claimants; committed fraud in relation to Claimants and their accounts; committed negligent misrepresentation; was negligent; violated §409.411(a), R.S.Mo.; committed conversion of Claimants' funds; and breached his contract with the Claimants. The allegations arose out of transactions in securities more fully presented at the hearing in this matter. The allegations also arose out of certain loans made by the Claimants to the Respondent, and Respondent's subsequent failure to repay Claimants' loans to them.

Unless otherwise admitted in his Answer, Respondent denied the allegations set forth in the Statement of Claim. Respondents stated the following affirmative defenses:

A. The claims of Claimants, if they ever had any, are barred due to their comparative or contributory fault and lack of due diligence.

B. Claimants' claims, if they ever had any, are barred by the doctrine of waiver, estoppel, ratification and laches.

C. Claimants' claims, if they ever had any, are barred in whole or in part because of their investment decisions were not made in reliance upon any act or failure to act of Respondent.

D. Claimants' claims, if they ever had any, are barred in whole or in part by the fact that any injury or damage suffered by Claimants was caused by Claimants' own acts or negligence and was not caused by or contributed to by any actions or negligence of Respondent.

E. Claimants' claims, if they ever had any, for punitive damages are barred by the equal protection clause, the excessive fines clause, and due process guarantees of the United States Constitution.

F. Claimants' claims, if they ever had any, are barred in whole or in part because Respondent acted in good faith at all times, had no intent to deceive Claimants, and did not act recklessly with respect to the obligations Respondent may have had, if any.

G. Claimants' Statement of Claim fails to state a claim upon which relief may be granted.

H. Claimants' claims, if they ever had any, are barred by their failure to mitigate.

I. If Claimants were sincerely interested in proceeding in this matter by way of arbitration, they could have done so long ago instead of opposing the request for arbitration when Respondent suggested it to the District Court; in addition, arbitration proceedings could have joined together all parties having knowledge of these matters, and if there is any liability of respondent, which Respondent denies, other parties could also have been held responsible for any damages to Claimants; instead, without justification, Claimants delayed for such a long period of time that, as a result thereof, Westport Financial Group, Inc. and Robert Fehrman, originally named as parties responsible to Claimants, were discharged from liability by bankruptcy proceedings, and Newhard Cook & Co., Inc. has been in the process of liquidating and disposing of its assets; in addition, witnesses who had knowledge concerning events alleged by Claimants are no longer available or

may have lost recollection of significant events or relevant documents; as a result, the delays and laches by Claimants have deprived Respondent of the means and opportunity to defend himself.

J. Claimants have engaged in misconduct and have not acted in good faith because, according to Respondent's understanding and belief, Claimants have used Federal Court proceedings and these arbitration proceedings as a means of applying pressure on Respondent, who is presently a defendant in criminal proceedings in the State of Missouri which were, according to Respondent's understanding and belief, instituted and encouraged by Claimants as part of a plan of Claimants and others to obtain information and advantage over Respondent to be used to incriminate Respondent and to deprive him of various rights, guaranteed by the Constitution of the United States and the State of Missouri, including the right to be secure against unreasonable searches and seizures, the right not to be compelled to be a witness against himself, the right not to be deprived of life or property without due process of law, the right to a speedy and public trial, the right to be informed of the nature and cause of the accusations against himself, the right to be confronted with witnesses against him, the right to have process for witnesses in his favor, the right to be confronted with witnesses against him, the right to have process for witnesses in his favor, the right to have assistance of counsel, the right not to be subjected to cruel and unusual punishments, and the right to liberty, the pursuit of happiness, the enjoyment of the gains of his own industry, equal rights and opportunity under the law, and equal protection of the laws, all guaranteed by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and their counterparts in the Constitution of the State of Missouri.

RELIEF REQUESTED

Claimant requested the following award:

Count I: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$200,000.00 actual damages, plus Pre-judgement interest, the costs of this suit, and for such further relief as this panel deemed just and proper.

Count II: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$200,000.00, said amount to be trebled to an amount not less than \$600,000.00, as well as attorney's fees, litigation costs, Pre-judgement interest, and costs incurred herein, all in accordance with 18 U.S.C. §1964(c), and for such other relief as this panel deemed just and proper.

Count III: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$1,000,000.00 actual damages, plus interest, together with \$600,000.00 in punitive damages to the Claimants, the costs of this suit, and for such further relief as this panel deemed just and proper.

Count IV: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$200,000.00 actual damages, plus interest, together with \$1,000,000.00 in punitive damages to the Claimants, the costs of this suit, and for such further relief as this panel deemed just and proper.

Count V: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$200,000.00 actual damages, plus interest, together with \$1,000,000.00 in punitive damages to the Claimants, the costs of this suit, and for such further relief as this panel deemed just and proper.

Count VI: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$200,000.00 actual damages, plus interest, together with \$1,000,000.00 in punitive damages to the Claimants, the costs of this suit, and for such further relief as this panel deemed just and proper.

Count VII: Claimants' prayed to recover from Respondent the consideration paid for the securities purchased from Respondent, together with interest at 8% per year from the date of payment, costs, reasonable attorneys' fees, and damages with interest, as provided in §409.411(a), Missouri Revised Statutes, together with such other relief as this panel may find just and proper.

Count VIII: Claimants' prayed judgement be rendered for them and against Respondent, in an amount according to proof, but not less than \$82,000.00 actual damages, plus interest, together with \$1,000,000.00 in punitive damages to the Claimants, the costs of this suit, and for such further relief as this panel deemed just and proper.

Count XIV(hereinafter referred to as "Count IX"): Claimants' prayed judgement against Respondent in the sum of \$189,800.00 together with interest from the date of filing, all costs of collection, legal expenses and attorneys' fees incurred or paid in collecting and/or enforcing this note, and for any other relief this panel deemed just and proper.

Respondent prayed that the Statement of Claim be dismissed, that he be discharged herein, that he be awarded his costs herein, including reasonable attorney's fees and all expenses incurred, or, in the alternative, that all proceedings herein be held in abeyance until such time as all criminal proceedings against Respondent have been completed, and that he be awarded such further and other relief as may be proper.

OTHER ISSUES CONSIDERED & DECIDED

In his Answer, Respondent requested that the arbitration be stayed pending resolution of the criminal case against him. Upon review of the request, and absent a joint request from the parties, the Director of Arbitration denied staying this arbitration, and directed that it proceed. The Director did indicate that the NASD would abide by any Court Ordered stay, if any were entered, of the arbitration.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

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. Counts I, II, V, VI, and VII of Claimants' Statement of Claim are, and each of them, denied and dismissed with prejudice.
2. Respondent Jerome Stanford Stein is liable for, and shall pay to the Claimants the sum of \$338,000.00 in actual damages, \$165,000.00 for punitive damages, and \$24,000.00 for attorneys' fees as satisfaction of Claimants' claims contained in Counts III, IV, VIII, and IX.

3. Respondent Jerome Stanford Stein is liable for, and shall pay to Claimants the sum of \$250.00 as an award of costs associated with the filing of this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$ 1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. There were six (6) sessions x \$ 1,000.00 and one (1) Pre-hearing session x \$300.00 = \$ 6,300.00 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a Pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$250.00 and shall **refund** the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimants.

Forum fees in the amount of \$6,300.00 are assessed against the Respondent. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated

David P. Oetting /s/
David P. Oetting
Public Arbitrator, Presiding Chair

August 16, 1995

Michael S. Hill /s/
Michael S. Hill
Public Arbitrator

August 9, 1995

Walter A. Beckers /s/
Walter A. Beckers
Industry Arbitrator

August 11, 1995

N.A.S.D. DISCIPLINARY REFERRAL

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Isadore Fendelman, and
Bernice Fendelman,

Claimants

and

94-02201

Jerome Stanford Stein,

Respondent

Hearings were held on June 7, 8, and 19, 1995, in St. Louis, Missouri. During the course of the hearings, the undersigned arbitrators heard testimony and reviewed evidence that indicated that Respondent Stein acted in direct violation of a Consent Decree from the Missouri State Securities Division by Respondent Stein's borrowing funds from clients. Therefore, the arbitrators are requesting that this matter be submitted for disciplinary review.

Dated:

David P. Oetting /s/

David P. Oetting

Public Arbitrator, Presiding Chair

August 16, 1995

Michael S. Hill /s/

Michael S. Hill

Public Arbitrator

August 9, 1995

Walter A. Beckers /s/

Walter A. Beckers

Industry Arbitrator

August 11, 1995