

N.A.S.D., AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

William J. Pierce

94-02339

Name of Respondents

R.J. Steichen and Company  
Carl D. Moen

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**REPRESENTATION**

For Claimant: William J. Pierce ("Pierce"): David S. Maglich, Esq., of Fergeson, Skipper, Shaw, Keyser, Baron & Tirabassi, P.A., Sarasota, Florida.

For Respondent: R.J. Steichen ("RJS"): Steven E. Rau, Esq., of Rau & Floyd, P.L.L.P., Minneapolis, Minnesota.

For Respondent: Carl D. Moen ("Moen"): pro se.

**CASE INFORMATION**

Statement of Claim filed: 6/20/94.

Claimant's Submission Agreement signed on: 6/14/94.

Respondent, RJS's Statement of Answer filed on: 11/25/94.

Respondent, RJS's Submission Agreement signed on: 11/23/94.

Respondent, Moen's Statement of Answer filed on: 11/23/94.

Respondent, Moen's Submission Agreement signed on: 11/21/94.

**HEARING INFORMATION**

Pre-Hearing Conference: A pre-hearing conference lasting one (1) session was held on January

3, 1996 via conference call in Fort Lauderdale, Florida with one arbitrator.

Hearing Dates/Sessions: On 1/22/96, 1/23/96, and 1/24/96, in Tampa, Florida a hearing lasting six (6) sessions was held.

### **CASE SUMMARY**

Claimant brought an action against Respondents based upon failure to disclose material facts, failure to recommend transactions consistent with client's objectives, failure to diversify, for conducting a course of trading unsuitable for Claimant, and for failure to supervise. Claimant alleged that these actions violated Federal Securities Laws, Section 10(b) of the Securities Exchange Act of 1934, 15 USC 78(j)(b) and Rule 10(b)5 of the Securities and Exchange Commission, the Florida Securities and Investor Protection Act, Chapter 517, Fla. Stats., Rules and Regulations of the NASD and also constituted negligence, breach of fiduciary duty and fraud.

Respondent, RJS asserted that each and every transaction entered into in Claimant's account was consistent with his expressed investment objectives. RJS asserted that Claimant had previous experience in trading on margin prior to opening his account at respondent firm and was fully aware of all the risks inherent in margin trading because he had experienced losses in margin trading at another brokerage firm. In addition, Claimant continued to trade in his margin account after experiencing margin calls and losses at Respondent firm. For example, one particular investment was sold out of his margin account, claimed as a tax loss, and repurchased contemporaneously in his IRA account (an alleged violation of the "wash sale" rule). Consequently, Claimant could not claim that transaction as a loss in his account while at the same time ratifying and waiving any objections he had to the transaction by continuing to hold the same security for several more years in his IRA account.

Respondent, RJS also alleged that many of the allegations asserted in Claimant's Statement of Claim were untrue. For example, Claimant alleged that his net worth was substantially depleted by the losses he experienced in his account at Respondent firm. In contrast, Respondent alleged that Claimant's net worth steadily increased while he had accounts at Respondent firm. Respondent, RJS also alleged that contrary to Claimant's representation in Claimant's Statement of Claim that his only substantial asset in 1994 was his personal residence, that Claimant was highly liquid and engaged in a broad variety of speculative investments.

### **RELIEF REQUESTED**

Claimant sought relief in the form of recovery of his out-of-pocket losses, plus interest, pursuant

to Chapter 517, as well as punitive damages, attorney's fees and costs, including expert witness fees. The Claimant's alleged damages pursuant to Chapter 517 totaled \$175,435.00, with attorney's fees of approximately \$20,000 and costs, including expert witness fees and filing fees, of approximately \$7,250.

Respondent, RJS requested dismissal of all of Claimant's claims and requested an award of attorney's fees and costs, as well as any other further relief deemed appropriate by the panel.

Respondent, Moen requested the Panel find Respondent Moen not guilty of the alleged charges.

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

Prior to the hearing, Respondent, Moen entered into a settlement with Claimant.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, 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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, RJS, is found liable and shall pay the Claimant the amount of \$55,000.00.
2. Respondent, RJS, shall also pay to the Claimant a further amount for attorney's fees, the amount of which shall be determined by a Court of competent jurisdiction.
3. Respondent, RJS, shall pay all forum costs in this matter.
4. Respondent, RJS's request for attorney's fees, costs, expenses and punitive damages are hereby denied.

#### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$4,800.00 (one pre-hearing conference @ \$300.00, plus six hearing sessions X \$750.00).

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Respondent, RJS, is hereby assessed \$4,800.00; \$750.00 of which shall be paid directly to the Claimant, and \$4,050.00 of which shall be paid to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

The Respondent RJS shall pay the non-refundable Section 45 surcharge of \$200.00 to the NASD.

Respondent, RJS, shall reimburse the Claimant \$200.00 for the non-refundable filing fee.

The NASD shall retain the session deposit of \$750.00 paid by Claimant.

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

Concurring Arbitrators' Signatures:

/s/

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Sherman S. Cohen, Esq.

Chairperson/Public

/s/

\_\_\_\_\_  
James D. Bruner

Panelist/Industry

/s/

\_\_\_\_\_  
Sheldon L. Barat

Panelist/Public

March 15, 1996

Date of Decision: \_\_\_\_\_